NO. 83-1346

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

POLEATE BAHAM, JR.
IRVEN COUSIN, AND
JACQUELINE CARR

VERSUS

HON. DAVID C. TREEN, GOVERNOR,
STATE OF LOUISIANA
HON. WILLIAM FRENCH SMITH, ATTORNEY GENERAL
OF THE UNITED STATES
HON. WILLIAM J. GUSTE, JR. ATTORNEY GENERAL
STATE OF LOUISIANA
HON. BRUCE E. UNANGST, PRESIDENT
ST. TAMMANY PARISH
HON. W. A. "PETE" FITZMORRIS, CHAIRMAN
ST. TAMMANY PARISH COUNCIL
HON. JAMES H. BROWN, SECRETARY OF STATE,
STATE OF LOUISIANA
HON. JERRY FOWLER, COMMISSIONER OF ELECTIONS,
STATE OF LOUISIANA
HON. LUCY REID RAUSCH, CLERK OF COURT
PARISH OF ST. TAMMANY 22ND
JUDICIAL DISTRICT COURT

ON DIRECT APPEAL FROM THE ORDER DENYING
PRELIMINARY INJUNCTION FROM UNITED STATES
DISTRICT COURT MIDDLE DISTRICT OF LOUISIANA

JURISDICTIONAL STATEMENT

JACQUELINE CARR
Attorney for Appellants/Plaintiffs
Councilman District 13, St. Tammany Parish
White Kitchen Square
Slidell LA 70459
(504) 643-3300

QUESTIONS OF LAW PRESENTED BY APPEAL

I.

WHETHER OR NOT RECERTIFICATION OF POLITICAL CANDIDATES, *AFTER* CLOSE OF QUALIFYING, IMPLEMENTING A NEW FORM, OF GOVERNMENT AND NEW REAPPORTIONMENT PLAN WITHOUT A QUALIFYING PERIOD, OR RE-OPENING OF QUALIFYING, IS A "CHANGE" WITHIN THE MEANING OF SECTION 5 OF THE VOTING RIGHTS ACT REQUIRING PRE-CLEARANCE?

II.

WHETHER A VOTING CHANGE CREATED BY A STATE COURT IS EXEMPT FROM SECTION 5 COVERAGE AND PRE-CLEARANCE?

III.

WHETHER THE THREE-JUDGE COURT ERRED IN FAILING TO MAKE A STATUTORY DETERMINATION OF COVERAGE; ERRED IN RENDERING THE QUESTION OF RECERTIFICATION "MOOT" AFTER CONDITIONAL SUBMISSION, AND RETROACTIVE PRE-CLEARANCE; AND FURTHER FAILED IN NOT PROVIDING ANY AFFIRMATIVE RELIEF TO THE IMPLEMENTATION OF A PATENTLY UNCONSTITUTIONAL VOTING CHANGE WITHOUT PRE-CLEARANCE?

IV.

WHETHER OR NOT PRE-CLEARANCE OF RECERTIFICATION AFTER DISMISSAL BY A NAMED ADVERSARY AND DEFENDANT, HON. WILLIAM FRENCH

SMITH UNITED STATES ATTORNEY GENERAL, IS A DENIAL OF A FAIR AND IMPARTIAL DETERMINATION UNDER SECTION 5?

V.

WHETHER OR NOT THE ENFORCEMENT OF RECERTIFICATION PRIOR TO RE-CLEARANCE IS CONSTITUTIONAL?

VI.

WHETHER OR NOT A SUBMISSION "WITHOUT PREJUDICE" UNDER SECTION 5 AND RETROACTIVE PRECLEARANCE SATISFIES STATUTORY SCHEME OF 1973 (C) VOTING RIGHTS ACT AND IS A BAR TO JUDICIAL REVIEW OF THE ATTORNEY GENERAL'S EXERCISE OF DISCRETION UNDER SECTION 5 OR OPERATES AS A DENIAL OF THE EQUAL PROTECTION OF THE LAW?

LIST OF PARTIES TO PROCEEDING

UNITED STATES SUPREME COURT
CIVIL ACTION NO. _____

POLEATE BAHAM, JR.
IRVEN COUSIN, AND
JACQUELINE CARR

VERSUS

HON. DAVID C. TREEN, GOVERNOR,
STATE OF LOUISIANA

HON. WILLIAM FRENCH SMITH, ATTORNEY GENERAL
OF THE UNITED STATES

HON. WILLIAM J. GUSTE, JR.,
ATTORNEY GENERAL, STATE OF LOUISIANA

HON. BRUCE E. UNANGST, PRESIDENT
ST. TAMMANY PARISH

HON. W. A. "PETE" FITZMORRIS, CHAIRMAN
ST. TAMMANY PARISH COUNCIL

HON. JAMES H. BROWN,
SECRETARY OF STATE, STATE OF LOUISIANA

HON. JERRY FOWLER, COMMISSIONER OF
ELECTIONS, STATE OF LOUISIANA

HON. LUCY REID RAUSCH, CLERK OF COURT
PARISH OF ST. TAMMANY
22ND JUDICIAL DISTRICT COURT

TABLE OF CONTENTS

Page

Questions of Law Presented by Appeal i

List of Parties to Proceeding iii

Table of Authorities v

Constitutional and Statutory Authorities Relied Upon 1

Official Report of Companion Case 8

Statement of the Grounds Upon Which Jurisdiction is Invoked 9

Statement of the Case 10

Abuse of Discretion in Denying Preliminary Injunction by Three-Judge Court 21

Substantial Federal Questions 23

Conclusion 24

Cases Believed to Sustain Jurisdiction 27

Affidavit of Service 29

Appendix A-1

TABLE OF AUTHORITIES

Page

Cases:

Allen v. State Board of Elections, 393 U.S. 544, 554-563; 98 S.Ct. 817, 826-830; 22 L.Ed. 2d 1 (1969) 24

Berry v. Doles, 198 S.Ct. 2692 23

Carr vs. Secretary of State, Writs denied, ____ So.2d ____, ____ So.2d ____, ____ So.2d 8

Cf. Reynolds, v. Sims, 377 U.S. 533 (1965) 25

Gomillion v. Lightfoot, 364 U.S. at 347, 81 S.Ct. at 130 24

Sewell v. St. Tammany Parish Police Jury, 69-1271 U.S. District Court, Eastern District of Louisiana . . .12, 20

United States v. East Baton Rouge Parish School Board, 594 F.2d 56 (1979) 25

Others:

U.S. Code (2) Title (2) Title 28:2284 9

United States Constitution, 14 and 15 Amendments . . .1, 19

1973 (c) 1965 Voting Rights Act 1

CONSTITUTIONAL AND STATUTORY AUTHORITIES RELIED UPON

Fourteenth Amendment, United States Constitution.
Fifteenth Amendment, United States Constitution.
1973 (c) 1965 Voting Rights Act:

"Whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the first sentence of section 1973(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973(a) of this title based upon determinations made under the second sentence of section 1973(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, procedure with respect to voting different from that in force or effect on November 1, 1968, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(b)(a) of this title based upon determinations made under the third sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, and unless and

until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: Provided, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to faciliate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. In the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of Title 28 and any appeal shall lie to the Supreme Court."

The Louisiana Constitution of 1974. Election After Reapportionment;

La. Const. Art. III, ¶4(A) and (B) provide:

"(A) Age; Residence; Domicile. An elector who at the time of qualification as a candidate has attained the age of eighteen years, resided in the state for the preceding two years,

and been actually domiciled for the preceding year in the legislative district from which he seeks election is eligible for membership in the legislature.

"(B) Domicile; Special Provisions.
However, at the next regular election for members of the legislature following legislative reapportionment, an elector may qualify as a candidate from any district created in whole or in part from a district existing prior to reapportionment if he was domiciled in that prior district for at least one year immediately preceding his qualification and was a resident of the state for the two years preceding his qualification. The seat of any member who changes his domicile from the district he represents or, if elected after reapportionment, whose domicile is not within the district he represents at the time he is sworn into office, shall be vacated thereby, any declaration of retention of domicile to the contrary notwithstanding."

The Louisiana Election Code.

LRS 18:463. *Notice of cnadidacy.*

"A. A notice of candidacy shall be in writing and shall state the candidate's name; the office he seeks; the address of his domicile; the parish, ward, and precinct where he is registered to vote, and the political party, if any, with which he is registered as being affiliated. The candidate shall designate in the notice the form in which his name shall be printed on the ballot. The candidate may designate his given, first and middle name, the initials of his given, first, and middle name, a nickname, or any combination thereof as the form in which his name shall be printed on the ballot, but he shall not designate a deceptive name. If the candidate designates a nickname in place of or in combination with his given name or the initials thereof, the nickname shall be set

off with quotation marks. A candidate shall include his surname in his designation of the form in which his name shall be printed on the ballot. The notice of candidacy also shall include a certificate, signed by the candidate, certifying that he has read the notice of his candidacy, that he acknowledges that he is subject to the provisions of the Louisiana Election Campaign Finance Disclosure Act (R.S. 18:1481 through R.S. 81:1493), if he is a candidate for any office other than United States Senator, Representative in Congress, or member of a committee of a political party, and that all of the statements contained in it are true and correct. The certificate shall be executed before a notary public or shall be witnessed by two persons who are registered to vote on the office the candidate seeks. If the candidate is serving outside the state with the armed forces of the United States, his notice of candidacy shall be witnessed by a commissioned officer in the armed forces of the United States."

The Department of Justice Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 46 Fed. Reg. 870 et seq. (1981).

28 C.F.R. 51.12: Examples of Changes affecting voting.

(a) Any change in qualifications or eligibility for voting.
(e) Any change in the constituency of an official or the boundaries of a voting unit. . .
(g) "any change affecting the eligibility of persons to become or remain candidates, (or) to obtain a position on the ballot. . ." must be submitted for Section 5 review."
(k) Any change affecting the right or ability of persons to participate in political campaigns which is effected by a jurisdiction subject to the requirement of Section 5.

Article II, Section 2-01(F), St. Tammany Parish Home Rule Charter.

Elections shall be held on a nonpartisan basis in accordance with the election laws of the state.

Article II, Section 1, Louisiana Constitution of 1974. Election Code
The legislature shall adopt an election code which shall provide for permanent registration of voters and for the conduct of all elections.

Procedure for Objections to Candidacy and Election Contests. LRS 18:1401 (A):

"A. A qualified elector may being an action objecting to the candidacy of a person who qualified as a candidate in a primary election for an office in which the plaintiff is qualified to vote."

LRS 18:1402. Proper Parties:

"A. The following persons are the proper parties against whom actions may be instituted in actions objecting to candidacy and in election contests: (1) the person whose candidacy is objected to; (2) the person or persons whose eligibility to be a candidate in a general election or whose election to office is contested; (3) the governing authority who called an election submitting a proposition to the voters, other than a proposed amendment to the constitution; (4) the secretary of state, when any election upon any proposed amendment to the constitution is contested; or (5) the official before whom the person whose candidacy is objected to had qualified.

B. Any candidate in an election which is contested shall

be a proper party to and shall have standing to intervene in the action contesting the election.

C. The secretary of state and the commissioner of elections shall be indispensable parties defendant to any action contesting an election for public office for the purpose of giving the trial court jurisdiction over those officers insofar as the judgment of the court affects the ministerial duties of those officers. When named as defendants as provided in this Subsection, costs of court shall not be assessed against these officers."

LRS 18;1404 Venue:

"A. An action objecting to a candidate or contesting an election shall be instituted in the district court for the parish where the state capitol is situated if the action involves an office filled by statewide election and shall be instituted in the district court for any Parish included, in whole or part, in the district for the office the action involves."

LRS 18:1406 Petition; answer:

"A. An action objecting to candidacy or contesting an election shall be instituted by filing a petition in a court of competent jurisdiction and venue and posting a copy of the petition in a conspicuous place at the entrance of the office of the clerk of court where the petition is filed.

B. The petition shall set forth in specific detail the facts upon which the objection or contest is based. If the action contests an election, the petition shall allege that except for substantial irregularities or error, fraud, or other unlawful activities in the conduct of the election, the petitioner would have qualified for a general election or would have been elected. The trial judge may allow the filing of amended

pleadings for good cause shown and in the interest of justice.

C. The defendant shall be served with citation directing him to appear in court at 10:00 a.m. on the fourth day after suit was filed, subject, however, to the provisions of R.S. 18:1408(D). The defendant is not required to answer the petition, but if he answers, he shall do so prior to trial."

LRS 18:1407 Appointment of agent for service of process:

"A. By filing notice of candidacy a local or municipal candidate appoints the clerk of court for each parish in which he is to be voted on as his agent for service of process in any action objecting to his candidacy, contesting his qualification as a candidate in a general election, or contesting his election to office. However, if a clerk of court who otherwise would be an agent for service of process under this Subsection is a named party in the petition, then the registrar of voters for that parish shall be the agent for service of process upon the defendant.

LRS 18:1408 Service of process; sending notice and copies; documents to be filed:

"A. If service of process is to be made on the appointed agent, as authorized by R.S. 18:1407, such service shall be made by serving citation on this agent, but at the same time that service is made on the appointed agent, a diligent effort shall be made to make personal service on the defendant at his domiciliary address as shown by his qualifying papers.

D. Service of process on and citation of the appointed agent, together with the posting of the petition as provided in R. S. 18:1406, shall be sufficient service to give the trial court jurisdiction over the person of the defendant."

LRS 18:1409. Trial; decision; appeal:

"A. Actions objecting to candidacy or contesting an election shall be tried summarily, without a jury, and in open court. The trial shall begin at 10:00 a.m. on the fourth day after suit was filed. If the defendant does not appear on the date set for the trial, either in person or through counsel, the court shall appoint an attorney at law to represent him by instanter appointment made prior to the commencement of the trial. In a case where a court appointment of an attorney to represent the defendant is made, the proceedings shall be conducted contradictorily against the court appointed attorney. The court shall determine the amount of the fee payable to curators ad hoc in accordance with criteria used by the court in fixing curator fees under Code of Civil Procedure Article 5091, et seq. The court shall tax the curator's fee as costs, and such fee shall be paid by the plaintiff unless the defendant was served personally and the appointment of a curator ad hoc was necessitated by his failure to appear at the trial, in which case the court may require the defendant to pay the curator's fee."

LRS 18:1414. Code of Civil Procedure:

"Any procedural matter not specifically provided for in this Code shall be governed by the Code of Civil Procedure."

OFFICIAL REPORT OF COMPANION CASE

Carr vs. Secretary of State, Writs denied,____ So.2d ____, ____So.2d ____, ____ So.2d

STATEMENT OF THE GROUNDS UPON WHICH JURISDICTION IS INVOKED

Creole minority plaintiffs of Louisiana and incumbent representative, District 13, St. Tammany Parish Council, Jacqueline Carr, properly convened a Three-Judge Panel under Section 5 of the Voting Rights Act to determine whether or not, pursuant to 42:1973(c), the recertification of the candidates for representative seats on the governing authority of St. Tammany Parish, Louisiana, a covered jurisdiction under the Act, *after* qualifying closed, realigning candidates; altering boundaries; and constituencies; and changing the form of governement *without* the reopening of qualifying and without due process of law by a state court judgment constituted a "change" in voting practice, qualification, and procedure requiring pre-clearance by the United States Department of Justice and further sought to enjoin the fall elections for the governing authority until pre-clearance of the voting change recertification enforcement was obtained by the Attorney General, pursuant to Section 5.

The Three Judge Court, designated by the Honorable Charles Clark, Chief Judge, United States Court of Appeals for the Fifth Circuit, is comprised of the Honorables Alvin B. Rubin, United States Fifth Circuit Court Judge; John V. Parker, Chief Judge, U.S. District Court, Middle District of Louisiana; and Frank J. Polozola, District Court Judge, Middle District of La. encompassing: (1) the Voting Rights Act of 1965 and 1982 Amendments; Title 42:1973 (c) *United States Code;* (2) Title 28:2284, *United States Code;* and *United States Constitution,* 14th and 15th Amendments.

The District Court's Order Denying Preliminary Injunction was rendered October 18, 1983; the primary election was conducted October 22, 1983; and the Notice of Appeal

was timely filed pursuant to Title 28:1253 on November 14, 1983. The appeal was forwarded for docketing on January 13, 1984, with a motion for substitution of the printed brief for the manuscript copy, and an extension of time to docket the appeal was granted January 17, 1984 by Mr. Justice Byron White.

STATEMENT OF THE CASE

This cause commenced by the filing of a complaint for violation of 1983 Civil Rights Act, Damages, Attorney's Fees and Petition to Convene a Three-Judge Court under the 1965 Voting Rights Act and 1982 Amendments thereto, specifically 42:1973(c) Title 28:2284(a), Fourteenth and Fifteenth Amendments, *United States Code* on *September 16, 1983* by plaintiffs, Jacqueline Carr, a petite Caucasian American female, the incumbent representative and candidate for re-election, District 13, St. Tammany Parish Council; Poleate Baham, Jr., a Creole minority residing in the historic Bayou Liberty area of Louisiana and Irven Cousin, a Black, similarly situated in the Bayou Liberty area, alleging that minority voting rights had been abridged and/or diluted by a Louisiana State Court decree appropriately syled a "gentlemen's agreement" confected by the Hon. Lewis S. Doherty, a Court of improper venue, Nineteenth Judicial District Court, State of Louisiana, located in Baton Rouge; and stipulated to by the following party-defendants/plaintiffs: (1) the Chief Elections Officer of the State of Louisiana, the Hon. James Brown, Secretary of State represented by the Louisiana Department of Justice, the office of the Hon. William Guste, Attorney General for the State of Louisiana, (2) the Chief Elections Officer of the Parish of St. Tammany, the Hon. Lucy Reid Rausch; (3) six councilmen who led the coup d' etait to revert from the councilmanic form of government, the St. Tammany Parish Home Rule Charter to the archaic and traditional form of Louisiana

local parish government, the Police Jury System, and (4) one aspiring candidate who desired to run unopposed.

Such consent decree recertified forty-six duly qualified candidates for the office of councilmenber, St. Tammany Parish Council, under the 1979 Reapportionment Plan, to candidates for Police Juror, under the 1983 Reapportionment plan, thus changing the *form of government* and the reapportioned Districting Plan, without establishing an additional qualifying period for either, contrary to law.

The plaintiffs herein, are individual taxpayers and qualified electors of Ward 9, St. Tammany Parish, Louisiana, and thus have standing to challenge the election process on both statutory and constitutional grounds.

At the time of the "gentlemen's agreement", Jacqueline Carr was in Bermuda attending the Louisiana Trial Lawyer's Post-Legislative Seminar, after having qualified for re-election Councilman, District 13, St. Tammany Parish during the qualifying period July 25-29, 1983, set by the Louisiana Election Code. At the time of qualifying, Jacqueline Carr, filed her Notice of Candidacy, pursuant to LRS 18:461-467, replete with a legal description of the district she sought to represent as incumbent, appropriately initialed, accepted and on file with the Hon. James W. Brown, Secretary of State, State of Louisiana. The legal description appropriately denoted that she qualified under the 1979 redistricting plan, which district she presently represented as incumbent councilman, pursuant to the legal opinion of the Hon. William Guste, Attorney General of the State of Louisiana. At the time of her election as Councilman, District 13, St. Tammany Parish Council, St. Tammany Parish, Louisiana, Jacqueline Carr was one of two female representatives elected to the parish governing authority in over 126 years; such police jury had been male dominated for over a century. Virginia

Benson of Slidell was also elected in 1979, serving as Council member, District 9, under the Court ordered 1979 Reapportionment Plan, *Sewell v. St. Tammany Parish Police Jury*, 69-1271 U.S. District Court, Eastern District of Louisiana, implemented under the 1965 Voting Rights Act to prohibit dilution of minority voting strength and to safeguard further abridgement of minority voting rights, protected by the Fourteenth and Fifteenth Amendments. In 1979, the first black in over 126 years of history of parish government, Mr. Anthony Alfred was elected to the governing authority.

The State of Louisiana, through its Secretary of State, Hon. James W. Brown, abridged and denied the rights of your plaintiffs by violating the Voting Rights Act of 1965 and Voting Rights Amendments of 1982, specifically Title 42:1973(c) by acquiescing to and altering the voting qualifications and procedures mandated by the Louisiana Election Code, specifically LRS 18:461-471, by agreeing to the recertification of all candidates implementing a *change* in the form of government and a *change* in the districting plan, without re-opening qualifying for either *change*. All plaintiffs are natives of St. Tammany Parish, Louisiana, and citizens of the United States of America. Neither Baham, nor Cousin, minority plaintiffs chose to qualify under the 1979 redistricting plan and directed by the Attorney General for the October 22, 1983 primary, but both would have qualified under the 1983 plan, if *allowed*, and pre-cleared. Pre-clearance of the 1983 Reapportionment Plan under Section 5 by the United States Department of Justice was not received until August 1, 1983, *after* qualifying had closed pursuant to law. The recertification judgment was not signed until August 17, 1983, more than *three* weeks after qualifying closed, into the race for representative of the parish governing body.

The recertification judgment had the effect of "Jim Crow" laws on the minority voters, as no one who was not a duly qualified candidate under the councilmanic form of government under the 1979 Districting Plan could qualify for the office of Police Juror under the 1983 Reapportionment Plan. Such state action without re-opening qualifying and notifying the electorate, not only dilutes minority voting rights, but such state action effectively prohibits, eliminates and terminates the rights of the minorities who had not previously qualified for election under a different form of government and reapportionment scheme unfavorable to their candidacy.

Such state action re-aligning candidates, changing the form of government and altering the boundaries of districts and constituencies, *after* qualifying had closed was accomplished (1) without notification and trial; (2) without legal representation as provided by LRS 18:1409(3) without a trial on the merits by acquiescence of the parties; (4) without reopening qualifying for additional candidates pursuant to the 1983 reapportionment plan and; (5) without preclearance of such "change" pursuant to Section 5, 1965 Voting Rights Act, of such deviation from the accepted voting practices of the State of Louisiana as enacted by the Louisiana legislature in its Louisiana Election Code, necessitated by the mandate of the people in the Louisiana Constitution of 1974, denying voters fundamental fairness; opportunity to participate in the electoral process; and guaranteed vested rights of candidacy.

The unconstitutional procedure even gave one candidate, Jerry Kenneth Schwehm, a free seat on the governing authority, without an election, due to the fact that the recertification "switched" him from a district with opposition, to one of no opponents, contrary to law. Such "bait and switch" without re-opening qualifying violated the basic

Fourteenth and Fifteenth Amendment rights of plaintiffs, and failed to allow voters the right to qualify for additional districts in the 1983 Reapportionment Plan carved out of the 1979 Districts, guaranteed to them by Article III, Section 4, (a) and (b), Louisiana Constitution of 1974, *Election after Reapportionment*, and further failed to give voters the right to qualify for elective office under the change in form of government, i. e., Police Juror. Councilman Carr's basic rights were further violated when the State of Louisiana ordered her to run for public office in a district not of her own choosing, for which damages lie, when she could have run in at least *four* new districts created from her present district. Thus the state and parish officials violated her most basic right of selecting the public office for which she seeks to run, substituting her district for another and failing to give notification of the substitution - i. e., "bait and switch."

The enforcement of a voting practice, qualification, and procedure, resulting in a *change* without pre-clearance by the Attorney General of the United States pursuant to Section 5, 1965 Voting Rights Act and 1982 Amendments by a covered jurisdiction amounts to a *change* in the racing form *after* the horses are out of the gate and *before* the entry is "conditioned" for the "Run for the Roses", leaving the other horses who would have been "fit" for the distance race, *scratched.*

The State of Louisiana, through its Secretary of State and the Hon. Lucy Reid Rausch, Clerk of Court for St. Tammany Parish, Louisiana are without authority in law to acquiesce in a judgment; *recertify* and *accept* qualified candidates in new districts; under a new form of government, i. e., police jury; without opening re-qualifying; without a qualifying period for the *change* in form of government and *change* in a pre-cleared Reapportionment Plan; without postponing and rejoining the election; without *notifying* the candidates or the electorate of *any* changes by a foreign court; and without obtaining pre-clearance of the

recertification procedure utilized prior to enforcement of the voting change from the United States Department of Justice for such deviation from the mandates of the Louisiana Election Code, under the guise of "state law" and renders the recertification procedure enforced fundamentally defective, as the recertification judgment enforced is an absolute nullity, rendered by a Court without jurisdiction of the candidates certified or subject matter of the demand.

Plaintiffs requested a Three-Judge Court in the original complaint filed September 16, 1983; however, the Three-Judge Court was not convened timely, and plaintiffs filed a Writ of Mandamus with the U.S. Fifth Circuit Court of Appeals October 3, 1983 to compel the convention of the panel to determine whether or not the recertification of candidates by a state court consent decree constituted a change in voting practice or procedure protected by the Voting Rights Act of 1965, requiring pre-clearance by the United States Attorney General under Section 5 prior to the enforcement of the voting change covered. On October 7, 1983, the Honorable Charles Clark, Chief Judge of the United States Fifth Circuit Court of Appeals designated the panel; trial before the Three-Judge Court was set for October 18, 1983.

In the interim, plaintiffs filed a Motion for Temporary Restraining Order to enjoin the enforcement of the recertification procedure by enjoining the absentee balloting and primary election scheduled for October 22, 1983 predicated on the harm to plaintiffs in that the state court judgment was an absolute nullity to plaintiff Jacqueline Carr; voting changes were implemented without appropriate qualifying periods; and absentee balloting was proceeding to the detriment of the electorate. The Honorable John V. Parker, Trial Court Judge, denied the Temporary Restraining Order on October 7, 1983, and when plaintiffs' counsel

argued unconstitutional recertification constituted governmental tyranny, the Court, admonished "Miss Carr, Get down from your soap box."

Minority plaintiffs allege in their complaint that the act of recertification, without re-opening qualifying and notifying the electorate, not only dilutes minority voting strength, but such state action effectively prohibits, eliminates and terminates the rights of the minorities who had not previously qualified under the 1979 reapportionment plan the right to run for political office. Such act further denies the minority voters equality of opportunity for representation for the next four years; not to mention the voters' right to choose the candidate of their choice, thus denying the minority voters, portected under the 1965 Voting Rights Act, access to the political system. Not only does such state action prohibit the minorities from having minority representation, if circumvents the national purpose for the raison d'etre of the Voting Rights Act itself.

Simply stated it is inconceivable and inconsistent that Congress would enact "special" legislation for affirmative action and extend such legislation to prohibit dilution of minority voting rights and then, *toute de suite*, allow such political skulduggery that would prevent a black from running for political office under a pre-cleared plan, when such plan, in effect, was not pre-cleared prior to the close of the qualifying period established by the Louisiana Election Code and therefore, legally unenforceable under the Voting Rights Act. *Paragraph IX Complaint.*

The issues sought to be reviewed were raised by the complaint; to date, the District Three-Judge Court has failed to rule on the merits. After trial on the merits, October 18, 1983, the Three-Judge Court denied plaintiff's Preliminary Injunction, without ruling whether or not recertifi-

cation was a covered change under the Voting Rights Act; and without ruling whether or not recertification was exempt from pre-clearance. The trial court, at the conclusion of the hearing, allowed the governing authority, St. Tammany Parish, to conditionally submit, *without prejudice* to the merits whether or not submission of the change was required by law under Section 5. On October 21, 1983, the governing authority, St. Tammany Parish Council, submitted, *without prejudice*, the recertification procedure utilized, in the October 22, 1983 Police Jury elections of St. Tammany Parish, stemming from the state court consent decree, under Section 5 for pre-clearance, requesting expedited approval; on October 28, 1983, the Attorney General pre-cleared the recertification; by issuing his letter of "no objection" to the enforcement of the recertification procedure, as a qualification, prerequisite, standard, practice or procedures not having the purpose and effect or denying or abridging the right to vote on account of race or color retroactively *after* the enforcement of the change in the primary election; reserving the right of the Attorney General to object, within the sixty-day period, or up until December 28, 1983. The Trial Court ruled in its order of October 18, 1983 that the submission, *without prejudice*, and the pre-clearance of recertification by the Attorney General prior to November 1, 1983 would render the substantive question before the Court moot; the Three-Judge Panel further denied plaintiff's Motion for Preliminary Injunction pursuant to 42:1973(c) finding that the plaintiffs had not made a sufficient showing to warrant enjoining the election and further finding that plaintiffs' rights, if it be demonstrated that Department of Justice clearance is required, can be adequately protected by enjoining the official promulgation of election returns, citing *Berry v. Doles*, 438 U.S. 190, 98 S.Ct. 2692, 57 L.Ed. 2d 693 (1978). This direct appeal followed timely on November 14, 1983. The Trail Court ordered no affirmative relief.

Plaintiff, Jacqueline Carr, was judicially gerrymandered out of her district which she served as incumbent Councilman, District 13, St. Tammany Parish, Louisiana, by recertification without due process of law. Recertification "switched" her to a different district, with new opponents, and with new constituents; approximately one-sixth of the constituency remained intact. Because of her fiduciary relationship with her present constituents, plaintiff Carr could not select a district to run in under the 1983 Reapportionment Plan when constituents, who were not qualified candidates were disallowed the right to qualify for office under the form of Police Jury government and the 1983 Reapportionment Plan. In short, if her people could not run for office, she would not run; moreover, because plaintiff Carr was a member of the state and Federal Bar bound by dual oaths she could not take the position that the election proceeding recertifying all candidates after qualifying without a qualifying period was constitutional inasmuch as the candidates were not parties to the recertification lawsuit. Therefore, she could not announce her candidacy under the recertification plan; and could not campaign for an unconstitutional election; She was ultimately defeated at the polls, because she would not "quit" the race thus denying her the right to run for political office and district of her choice.

The minority plaintiffs were denied the right to qualify for the office of Police Juror under the 1983 pre-cleared Reapportionment Plan, and thus denied representation for the next four years and the right to participate in the electoral process.

On October 31, 1983, plaintiffs filed a Voluntary Dismissal of the Civil Rights Action re-filing in New Orleans Federal Court and retained the Three-Judge Panel for declaratory and injunctive relief.

Subsequent to the direct appeal for the denial of a preliminary injunction enjoining the election for Police Jurors, St. Tammany Parish, Louisiana, plaintiffs amended their complaint for declaratory and injunctive relief requesting the Three-Judge Court to enjoin the enforcement subsequent to pre-clearance of (1) recertification (2) reapportionment and (3) change in form from Council to Police Jury predicated on constitutional and statutory grounds pursuant to 42:1973(c) and further requesting a temporary restraining order; expedited hearing for preliminary injunction to enjoin enforcement of covered changes; preliminary injunction; and injunction pending appeal, predicated on likelihood of success on the merits and/or appeal.

On January 5, 1984, the Court denied plaintiffs' request for temporary restraining order to enjoin seating of government; expedited hearing for preliminary injunction; and injunction pending appeal, enjoining enforcement of recertification based on the fact that relief was not warranted and irreparable injury could not be proved.

Corollary actions attacking the election are outstanding and meritorious:

a. *Carr vs. Brown*, a state court action seeking to enjoin the election, collaterally attacking *Sharp vs. Brown*, on application for writs to the United States Supreme Court; companion case, *Baham vs. Treen*, direct appeal, filed September 19, 1983. 441 2d 223 (1st Cir) 1983.

b. *Sharp vs. Brown*, Petition for Nullity, 269, 284 "F" on appeal First Circuit Court of Appeal. Louisiana.

c. *Sewell vs. St. Tammany Parish Police Jury*, #69-1271, intervention complaint, one-man, one-vote, compact

and contiguous redistricting; injunction of enforcement of recertification procedure; dilution of minority voting rights, action to nullify and void as unconstitutional elections for St. Tammany Parish Police Jury, under advisement, pending post-trial memoranda. U.S. District Court, Eastern District.

d. *Carr vs. Broom*, Deprivation of Civil Rights, Damages, U.S. District Court for the Eastern District of Louisiana, Civil Action #83-5229 Filed October 21, 1983. U.S. District Court, Eastern District

Intervention Complaint, *Sewell*, Motion to Intervene granted December 14, 1983.

On January 9, 1984, plaintiffs requested a stay of the Three-Judge Panel action for Declaratory and Injunctive Relief, electing to proceed in the *Sewell* case in New Orleans, for expeditious determination on the merits of the constitutional and statutory challenges to (1) recertification (2) reapportionment and (3) change in form of government.

On January 10, 1984, the Three-Judge Court stayed further action in this cause for ninety days, at which time the Three-Judge Court will review this action.

ABUSE OF DISCRETION IN DENYING PRELIMINARY INJUNCTION BY THREE-JUDGE COURT

The Three-Judge Court has abused its discretion in denying the Preliminary Injunction, enjoining the election for Police Jurors, St. Tammany Parish, Louisiana pursuant to 42:1973(c), 1965 Voting Rights Act and 1982 Amendments thereto, predicated on the following:

1. The recertification judgment and recertification procedure utilized, constituting the *change* in voting practice, qualification, or procedure is patently unconstitutional on its face, for denial of Fourteenth Amendment requisites of notice and opportunity to be heard, inasmuch as recertification adjudicates the rights of candidates without the candidates being parties to the lawsuit.

2. It is unconstitutional to implement a change in a reapportionment plan and form of government without establishing a specific qualifying period, and the absence of a qualifying period denies the voters equal protection of the law; the right to run for office and; the fundamental right to vote and participate in the electoral process.

3. The Request for Injunctive Relief enjoining change prior to pre-clearance and the convention of the Three-Judge Panel was filed September 16, 1983, prior to the *October 22, 1983* primary election. Five weeks was sufficient time to convene the panel; make an express determination on the coverage question and provide affirmative relief for a Section 5 violation.

4. The single Judge, the Hon. John V. Parker failed to immediately request the Honorable Charles Clark to convene the panel, even though the election was eminent and the complaint alleged a *change* in voting qualification and procedure, being enforced without mandatory pre-clearance

under the Voting Rights Act. Plaintiffs were forced to file a Writ of Mandamus directed to the Hon. John V. Parker to secure the convention of the panel on October 3, 1983; the panel was designated October 7, 1983 and the trial was scheduled on October 18, 1983. Therefore, the trial of the issues was not scheduled until election "eve" when the Court was reluctant to give affirmative relief due to the timing of the election.

5. The Three-Judge Court abused its discretion by not determining coverage under the Act, whether recertification was exempt from pre-clearance, and by allowing the St. Tammany Parish Council to submit for pre-clearance, *without prejudice*, a substantive election change, and Section 5 violation resulting in retroactive pre-clearance *after* the election occurred and the change enforced, in contravention of the statutory provisions of the Voting Rights Act, 42: 1973(c).

6. The Three-Judge Court has no discretion to alter the statutory requirements of submission, to fashion a submission, *without prejudice*, to a named party/defendant, resulting in a potential bar to judicial review. Such is tantamount to the "fox watching the henhouse," and thus denies plaintiffs' affirmative relief guaranteed by the Act. Under the Act, declaratory judgment was the only unbiased procedural means available to obtain pre-clearance inasmuch as Hon. Willaim French Smith was a named defendant, and was not dismissed until *after* trial on the merits; therefore, he should not have accepted the submission for pre-clearance. Moreover, statutory submission, with an intent to be bound, is a predicate to pre-clearance under the Act to enforce a voting change in a covered jurisdiction. Moreover, it was the suggestion of the Justice Department attorneys that the election need not be enjoined for failure to obtain pre-clearance prior to enforcement of the change; that submission and pre-clearance could be obtained *after* the fact,

in derogation of the intent and purpose of the Voting Rights Act.

SUBSTANTIAL FEDERAL QUESTIONS

The issue of recertification has never before been adjudicated as a covered change subject to pre-clearance under the mandates of the 1965 Voting Rights Act. As such, the Honorable United States Supreme Court is the only Court competent to rule on the issue. Moreover, the recertification judgment is in complete conflict with the United States Constitution and denies candidates, not parties before the Court, fundamental due process of law, as it adjudicates voting rights of candidates, without competent jurisdiction, and the principles of res judicata cannot apply.

Secondarily, the implementation of a reapportionment plan and change in form of government without a specific qualifying period is unconstitutional, and constitutes a denial of the equal protection of the laws.

Conditional submission, *without prejudice* is statutorily impermissible under the Voting Rights Act, as it would allow covered jurisdictions their cake and "eat", too.

The denial of preliminary injunction enjoining the recertification change, having the effect of enforcing the voting change without pre-clearance is capable of repetition, yet capable of evading review. The Order Denying Preliminary Injunction is in direct conflict with its cited case, *Berry v. Doles*, 198 S.Ct. 2692, inasmuch as the Three-Judge Court afforded plaintiffs no affirmative relief for a Section 5 clear-cut duty; the only sufficient remedy is to enjoin the enforcement of the unconstitutional recertification judgment constituting a substantive election change and null and void

the election for constitutional and statutory violations of Section 5 including, but not limited to retroactive pre-clearance.

CONCLUSION

The Three Judge Panel, the District Trial Court, erred in not determining coverage under the Act, and in not determining whether the covered change must be submitted for approval in accordance with the Act before enforcement. Inasmuch as attempts to enforce changes that have not been subjected to Section §5 scrutiny may be enjoined by a Three Judge Court in a suit brought by a voter, *Allen v. State Board of Elections*, 393 U.S. 544, 554-563; 98 S.Ct. 817, 826-830; 22 L.Ed. 2d 1 (1969), and inasmuch as Congress expressly intended that disputes involving coverage of Section §5 be determined by a Three Judge Court, 42:1973(c), the Trial Court erred in disallowing your private litigants any affirmative relief under the Act, including the appropriate remedy if coverage and violation were found, and should have determined whether St. Tammany Parish should have been enjoined from holding the election until pre-clearance obtained under Section 5, as a denial of constitutionally protected rights demands judicial protection. *Gomillion v. Lightfoot*, 364 U.S. at 347, 81 S.Ct. at 130.

> When a State exercises powers wholly within the domain of state interest, it is insulated from federal judicial review. But such insulation is not carried over when state power is used as an instrument for circumventing a federal protected right.

The Constitution forbids sophisticated as well as simple-minded modes of discrimination; each citizen has an inalienable right to full and effective participation in the political processes of his state legislative bodies.

United States v. East Baton Rouge Parish School Board, 594 F.2d 56 (1979)

Voting rights include not only the right to cast a ballot, but the right of citizens to participate fully and equally in the entire political process. Cf.*Reynolds v. Sims*, 377 U.S. 533 (1965). The right to run for political office is corollary to the right to vote and is one of the most fundamental privileges of American citizenship.

The Fourteenth Amendment to the Constitution of The United States expressly provides that "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; . . . nor deny to any person within its jurisdiction the equal protection of the laws."

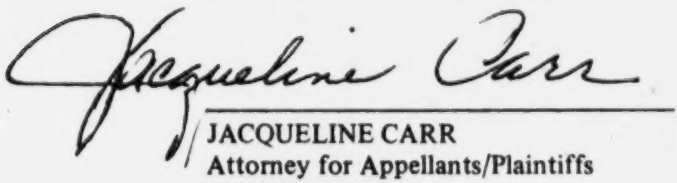
42 U.S.C. §1973 a(c) provides that no change in voting qualification, or prerequisite to voting or standard or practice, or procedure different from that in force at the time court proceedings commenced shall be enforced "unless and until the court finds such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color," or alternatively is submitted to and precleared by the United States Attorney General.

The governmental state action in recertification of political candidates *after* qualifying, implementing a new form of government *and* reapportionment plan *with* altered districts, boundaries, and constituencies, *without* the reopening of qualifying, constitutes a Louisiana Hayride *a' la femme and a' la Creole.*

Considering the foregoing cases, statutes and principles of

controlling principles of law and in light of the substantial, legitimate, governmental interests served by the Voting Rights Act, this Honorable Court is respectfully requested to note probable jurisdiction and set the case for oral argument within thirty days.

RESPECTFULLY SUBMITTED,



JACQUELINE CARR
Attorney for Appellants/Plaintiffs
White Kitchen Square
2342 Front Street
P.O. Box 550
Slidell, LA 70459
(504) 643-3300

CASES BELIEVED TO SUSTAIN JURISDICTION

I. *Berry v. Doles*, 438 U.S. 190, 98 S.Ct. 2692, 57 L.Ed. 2d 693 (1978)

II. *Morris v. Gressette*, 432 U.S. 491 (1977)

III. *McDaniel v. Sanchez*, 452 U.S. 130, 101 S.Ct. 2224, 68 L.Ed. 2d 724(1981)

IV. *Wise v. Lipscomb*, 437 U.S. 535 (1978)

V. *East Carroll Parish School Board v. Marshall*, 424 U.S. 636 (1976)

VI. *Connor v. Johnson*, 402 U.S. 690, 691 (1971)

VII. *Allen v. State Board of Elections*, 393 U.S. 544 89 S.Ct. 817 (1969)

VIII. *Georgia v. United States*, 411 U.S. 526 93 S.Ct. 1702 (1973)

IX. *Sharp v. Brown*, No. 269284 (19th Jud. Dis. Ct. Div. F. August 17, 1983)

X. *South Carolina v. Katzenbach*, 383 U.S. 301 (1966)

XI. *Beer v. United States*, 425 U.S. 130 (1976)

XII. *Perkins v. Matthews*, 400 U.S. 379 (1971)

XIII. *Hathorn v. Lovorn*, 102 S.Ct. 2421, rehearing denied 103 S.Ct. 15.

XIV. *Herron v. Koch*, 523 F. Supp. 167, D.C.N.Y. 1981

XV. *City of Lockhart v. United States*, 103 S.Ct. 998 (1983)

XVI. *Reynolds v. Sims*, 377 U.S. 533

AFFIDAVIT OF SERVICE

STATE OF LOUISIANA
PARISH OF ST. TAMMANY

BEFORE ME, the undersigned authority, duly commissioned and qualified, personally came and appeared: JACQUELINE CARR, who being by me first duly sworn deposed and said:

That she has served a copy of the Jurisdictional Statement to Mr. James R. Jenkins, Assistant District Attorney, 501 E. Boston Street, Covington, LA; Ms. Cynthia Young, Assistant Attorney General, P.O. Box 44005, Capitol Station, Baton Rouge, LA 70804; Ms. Shelly Zwick, Assistant U.S. Attorney, 352 Florida Street, Baton Rouge, Louisiana; Mr. Tom Derveloy, Attorney at Law, 202 Columbia Street, Covington, LA. by placing a copy of said addressed to each of them at their respective address, on this 13th day of January, 1984.

SWORN TO AND SUBSCRIBED

BEFORE ME, ON THIS 13th DAY
of January, 1984.

Jacqueline Carr

JACQUELINE CARR

APPENDIX INDEX

Page

Order Appealed dated October 18, 1983, *Baham et al vs. Treen et al,* No. 83-997-A, U.S. District Court, Middle District of Louisiana A-3–A-4

Notice of Appeal filed November 14, 1983, *Baham et als vs. Treen et als,* U.S. District Court, Middle District of Louisiana A-5–A-6

Order Designating Three-Judge Court dated October 7, 1983, *Baham et al vs. Treen et al,* No. 83-997 U.S. District Court, Middle District of Louisiana .A-7–A-8

Order dated January 5, 1984, *Baham et al vs. Treen et al,* U.S. District Court, Middle District of Louisiana A-9–A-11

Judgment dated August 17, 1983, *Sharp et al vs. Brown,* No. 269284, 19th Judicial District Court for the Parish of East Baton Rouge, State of Louisiana A-12–A-14

Decision dated October 4, 1983, *Carr vs. Secretary of State, et al,* Number 83 CE 1105, State of Louisiana, Court of Appeal, First Circuit A-15–A-25

1979 and 1983 Reapportionment Maps A-26–A-27

Letter dated May 31, 1983 addressed to W. A. "Pete" Fitzmorris, Council Chairman, St. Tammany Parish, from Gerald W. Jones, Chief, Voting Section, U.S. Department of Justice A-28–A-29

APPENDIX INDEX (Continued)

Page

Opinion No. 83-633 dated July 26, 1983 addressed to James R. Jenkins, Assistant District Attorney, St. Tammany Parish, by William J. Guste, Jr., Attorney General A-30–A-33

Letter dated July 28, 1983 addressed to Mr. Carl Gabel, Director of the Section 5 Unit, U.S. Department of Justice by W. A. "Pete" Fitzmorris . . .A-34–A-37

Letter dated August 1, 1983 addressed to W. A. "Pete" Fitzmorris, Council Chairman, St. Tammany Parish, by Gerald W. Jones, Chief, Voting Section, U.S. Department of Justice A-38–A-39

Letter dated October 28, 1983 addressed to James R. Jenkins, Assistant District Attorney, by Gerald W. Jones, Chief, Voting Section, U. S. Department of Justice A-40–A-41

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

CIVIL ACTION
NUMBER 83-997-A

POLEATE BAHAM, JR., ET AL

VERSUS

HONORABLE DAVID C. TREEN, GOVERNOR,
STATE OF LOUISIANA, ET AL

ORDER

The precise issue before the Court has never before been adjudicated. The briefs of the defendants and of the Attorney General of the United States have been filed only within the last 24 hours, and the plaintiffs' brief was filed when Court convened this morning. As a result the Court has not had an adequate opportunity to study the issues.

Enjoining the election of candidates from St. Tammany Parish would result in serious hardship on the candidates and the electorate. To make the necessary changes in the voting machines would impose both a major administrative burden and substantial expense on the custodian of voting machines, if indeed it could be accomplished at all. Such a measure should not be taken unless the Court is satisfied that preclearance of the recertification procedure was required by the Voting Rights Act, that holding the election by itself irreparably damages rights protected by the Voting Rights Act, and that there is no other way adequately to protect those rights.

The plaintiffs have not made a sufficient showing to warrant enjoining the election. However, the Court is not

prepared to rule that recertification is exempt from preclearance. Should the Court be satisfied that the plaintiffs have demonstrated that Department of Justice clearance is required, their rights can be adequately protected by enjoining the official promulgation of election returns. See *Berry v. Doles*, 438 U.S. 190, 98 S.Ct. 2692, 57 L.Ed.2d 693 (1978).

Accordingly, the motion for a prelinary injunction preventing the holding of the election is denied. The Court expresses no opinion at this time on the merits of this suit. A further hearing for the purpose of considering the merits is scheduled for Tuesday, November 1, 1983, at 10:00 a. m. If in the meanwhile the appropriate defendants submit an application for clearance of the recertification process and clearance of the process that was in fact followed is received, the substantive question before the Court will be moot. Such submission, if it occurs, shall be completely without prejudice to the claims of defendants or the motion that submission was not required by law. If in the meanwhile the defendants have not done so, the Court will rule on the merits.

Baton Rouge, Louisiana, October 18, 1983.

/s/ Alvin B. Rubin
Alvin B. Rubin
United States Circuit Judge

/s/ John V. Parker
John V. Parker
United States District Judge

/s/ Frank J. Polozola
Frank J. Polozoa
United States District Judge

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA
UNITED STATES OF AMERICA

CIVIL ACTION NO. 83-997-A

POLEATE BAHAM, JR.
IRVEN COUSIN, AND
JACQUELINE CARR

VERSUS

HON. DAVID C. TREEN, GOVERNOR
STATE OF LOUISIANA

HON. WILLIAM FRENCH SMITH,
ATTORNEY GENERAL OF THE UNITED STATES

HON. WILLIAM J. GUSTE, JR.,
ATTORNEY GENERAL, STATE OF LOUISIANA

HON. BRUCE E. UNANGST, PRESIDENT
ST. TAMMANY PARISH

HON. W. A. "PETE" FITZMORRIS, CHAIRMAN
ST. TAMMANY PARISH COUNCIL

HON. JAMES H. BROWN,
SECRETARY OF STATE, STATE OF LOUISIANA

HON. JERRY FOWLER, COMMISSIONER OF
ELECTIONS, STATE OF LOUISIANA

HON. LUCY REID RAUSCH, CLERK OF COURT
PARISH OF ST. TAMMANY
22ND JUDICIAL DISTRICT COURT

FILED _____ DEPUTY CLERK _____

NOTICE OF APPEAL

Appellants, Poleate Baham, Jr. and Irven Cousin, through their attorney, Jacqueline Carr, hereby give Notice that they desire to direct appeal to the United States Supreme Court from the order denying the preliminary injunction entered in the above action by the Honorables Rubin, Parker and Polozola, on the 18th day of October, 1983, pursuant to Title 28:1253, United States Code.

Respectfully submitted,

/s/ Jacqueline Carr
JACQUELINE CARR
Attorney for Appellants
White Kitchen Square
2342 Front Street
P.O. Box 550
Slidell, LA 70459
(504) 643-3300

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA

POLEATE BAHAM, JR., IRVEN COUSIN,
and JACQUELINE CARR,

Plaintiffs,

versus

HON. DAVID C. TREEN, Governor, State of Louisiana, HON. WILLIAM FRENCH SMITH, Attorney General of the United States; HON. WILLIAM J. GUSTE, JR., Attorney General, State of Louisiana; HON. BRUCE E. UNANGST, President, St. Tammany Parish; HON. W. A. "PETE" FITZMORRIS, Chairman, St. Tammany Parish Council; HON. JAMES W. BROWN, Secretary of State, State of Louisiana; HON. JERRY FOWLER, Commissioner of Elections, State of Louisiana; HON. LUCY REID RAUSCH, Clerk of Court, Parish of St. Tammany, 22nd Judicial District Court,

Defendants.

ORDER DESIGNATING THREE-JUDGE COURT

Filed October 11, 1983

(1) REQUESTING JUDGE: John V. Parker, Chief Judge
United States District Court

(2) DISTRICT JUDGE: Frank J. Polozola
United States District Judge

(3) CIRCUIT JUDGE: Alvin B. Rubin
United States Circuit Judge

The requesting judge (1) above named, to whom an application for relief has been presented in the above cause, having notified me that the action is one required by act of Congress to be heard and determined by a district court of three judges, I, Charles Clark, Chief Judge of the United States Court of Appeals for the Fifth Circuit, hereby designate the circuit judge (3) and district judge (2) named above to serve with the requesting judge (1) as members of, and with him to constitute, the said court to hear and determine the action.

This designation and composition of the three-judge court is not a prejudgment, express or implied, as to whether this properly is a case for a three-judge rather than a one-judge court. This is a matter best determined by a three-judge court as this enables a simultaneous appeal to the Court of Appeals and to the Supreme Court without the delay, awkwardness, and administrative insufficiency of a proceeding by way of mandamus from either the Court of Appeals, the Supreme Court, or both, directed against the Chief Judge of the Circuit, the presiding District Judge, or both. The parties will be afforded the opportunity to brief and argue all such questions before the three-judge panel either preliminarily or on the trial of the merits, or otherwise, as the court thinks appropriate.

/s/ Charles Clark
Chief Judge
United States Court of Appeals
for the Fifth Circuit

DATE October 7, 1983

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

CIVIL ACTION
NUMBER 83-997-A

POLEATE BAHAM, JR., ET AL

VERSUS

HON. DAVID C. TREEN, GOVERNOR,
STATE OF LOUISIANA, ET AL

ORDER

Filed January 5, 1984

Plaintiffs have filed a "motion for a temporary restraining order," a "motion and order for injunction pending appeal pursuant to Rule 62(c) FRCP," and a "motion and order for expedited hearing for emergency injunctive relief." Plaintiffs seek a temporary restraining order enjoining the upcoming change in form of government in St. Tammany Parish from that of Home Rule Charter to that of Police Jury and the swearing in of the newly elected representatives on January 9, 1984. Although plaintiffs admit that this change in form of government was precleared by the Attorney General of the United States, they argue that certain "irregularities" occurred in its submission to the government. For purposes of these motions, the court will assume that there were procedural irregularities in the manner in which the submission was made to the office of the Attorney General. Assuming the correctness of plaintiffs' factual claims, a three-judge court has the authority to enjoin only a change in voting practices which has not been precleared by the Attorney General; it has no jurisdiction to "review

the Attorney General's exercise of discretion under §5." *Morris v. Gressette*, 432 U.S. 491, 507, 97 S.Ct. 2411, 2421, 53 L.Ed.2d 506 (1977); *Allen v. State Board of Elections*, 393 U.S. 544, 89 S.Ct. 817, 22 L.Ed.2d 1 (1969). Here all parties agree that the May 31, 1983 letter of the Attorney General was a preclearance of the change from council to police jury local government in St. Tammany Parish. Thus, the change complained of has been precleared.

The temporary restraining order must, therefore, be denied; for the same reasons the motion for preliminary injunction must be denied. As to plaintiffs' prayer for a temporary restraining order and a preliminary injunction predicated upon the claims of unconstitutionality vel non of the reapportionment plan, they do not make a sufficiently strong showing of success on the merits to justify emergency injunctive relief. Likewise, there is no need for an expedited hearing for emergency injunctive relief. The court also concludes that an injunction pending appeal is not warranted. To the extent that these matters fall under the jurisdiction of the three-judge court, all judges concur in the decision, and to the extent that these matters are more properly for a single judge, they are decided by Judge John V. Parker.

Accordingly, plaintiffs' motions for a temporary restraining order, a preliminary injunction, an injunction pending appeal and an expedited hearing for emergency injunctive relief are hereby DENIED.

Baton Rouge, Louisiana, January 5, 1984.

/s/ Alvin B. Rubin
ALVIN B. RUBIN
UNITED STATES CIRCUIT JUDGE

/s/ John V. Parker
JOHN V. PARKER, CHIEF
JUDGE MIDDLE DISTRICT
OF LOUISIANA

/s/ Frank J. Polozola
FRANK J. POLOZOLA
UNITED STATES DISTRICT
JUDGE

A-12

NUMBER: 269284

DIVISION: "F"

19th JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

HERMAN A. SHARP

VERSUS

HONORABLE JAMES H. BROWN
SECRETARY OF STATE

JUDGMENT

Filed August 17, 1983

This matter came on to be heard pursuant to previous assignment on this 12th day of August, 1983.

PRESENT: JULIAN I. RODRIGUE, Attorney for Petitioners.
ELAINE BOYLE, Assistant Attorney General, representing Hon. James H. "Jim" Brown, Secretary of State.
HONORABLE LUCY REID RAUSCH, Clerk of Court, St. Tammany Parish, in proper person, Intervenor
JERRY K. SCHWEHM in proper person, Intevenor.

On joint stipulation of all parties in proper person or through counsel, and considering "Exhibits P-A through P-Q," filed herein in evidence proving that the election to repeal the charter was valid and the St. Tammany Parish

Council form of government is repealed and that the U.S. Department of Justice has indicated no objection to the re-districting of St. Tammany Parish in accordance with "Exhibit P-J" map of "New" Police Jury Districts and no objection to the change to the Police Jury form of Government; and on showing to the Court that the plaintiffs attempted to qualify as police jurors for the reasons orally assigned on the 12th day of August, 1983.

IT IS ORDERED, ADJUDGED AND DECREED THAT:

1. The persons listed in "Exhibit P-K" are in substantial compliance with the requirements of La. R.S. 18:463 "Notice of Candidacy" and legally qualified as candidates for the office of Police Juror in the new Police Jury Districts as more fully shown in "Exhibits P-K and P-J".

2. Hon. Lucy Reid Rausch, Clerk of Court of St. Tammany Parish, Louisiana is ordered to accept the qualifications of the persons listed in "Exhibit P-K" as properly qualified for the office of Police Juror in the new police jury districts as more fully shown in "Exhibits P-K and P-J".

3. On or before Friday, August 19, 1983, Hon. Lucy Reid Rausch, Clerk of Court of St. Tammany Parish, Louisiana is ordered to Re-Certify the persons listed on "Exhibit P-K" to the Hon. James H. "Jim" Brown, Secretary of State as properly qualified in the new police jury districts as more fully shown in "Exhibits P-K" and P-J".

4. Hon. James H. "Jim" Brown is ordered to accept the Re-Certification of the candidates for the office of Police Juror of St. Tammany Parish, Louisiana in the proper newly created Police Jury Districts as more fully set out in "Exhibits P-K and P-J" as properly qualified candidates for said offices and to print the election ballots accordingly.

5. Hon. Lucy Reid Rausch and Hon. James H. "Jim" Brown are further ordered to accomplish all ministerial duties requisite to put this order into full force and effect.

6. The Rule to Show Cause why a preliminary injunction should not issue be and the same is hereby denied.

THUS DONE AND SIGNED at Baton Rouge, Louisiana this 17 day of August, 1983.

/s/ Lewis S. Doherty, III
HON. LEWIS S. DOHERTY, III
DISTRICT JUDGE

APPROVED:

/s/ Julian J. Rodrigue
JULIAN J. RODRIGUE
Attorney for Plaintiffs

/s/ Elaine Boyle
ELAINE BOYLE
ASST. ATTORNEY GENERAL
Attorney for Hon.
James H. "Jim" Brown,
Secretary of State

/s/ Lucy Reid Rausch
HON. LUCY REID RAUSCH, Intervenor
Clerk of Court
St. Tammany Parish
In Porper Person

/s/ Jerry K. Schwehm
JERRY K. SCHWEHM, Intervenor
In Proper Person

STATE OF LOUISIANA
COURT OF APPEAL
FIRST CIRCUIT
NUMBER 83 CE 1105

JACQUELINE CARR

VERSUS

SECRETARY OF STATE, ET AL

ON APPEAL FROM THE TWENTY-SECOND JUDICIAL DISTRICT COURT, PARISH OF ST. TAMMANY, STATE OF LOUISIANA, HONORABLE THOMAS W. TANNER, JUDGE PRESIDING.

BEFORE: PONDER, COLE, SAVOIE, LANIER AND ALFORD, JJ. LANIER, J.

This is a suit to enjoin the October 22, 1983 primary election for the St. Tammany Parish Police Jury. Made defendants are the Secretary of State of Louisiana (Secretary), the St. Tammany Parish Council (Council) and all candidates who qualified for the election. Candidate Jerry Kenneth Schwehm filed declinatory and dilatory exceptions alleging insufficiency of service of process and improper use of summary procedure. The Secretary filed dilatory exceptions of prematurity and unauthorized use of summary proceedings, a peremptory exception of no cause of action and a motion to dismiss alleging that the "plaintiff has unduly delayed in seeking this injunctive relief and has by her own inaction forfeited her rights, if any, to a summary proceeding at this time." The trial court sustained "the exceptions in the proceedings" and dismissed the suit. This devolutive appeal followed.

FACTS

On September 13, 1980, the people of St. Tammany Parish (Parish) voted to adopt a home rule charter which provided for a Parish President and Parish Council in lieu of the Police Jury form of government. The new Parish Council was composed of 16 persons, two elected at large and 14 elected from single member districts. The 14 council districts were the same as the prior 14 police Jury districts established by a 1979 federal court order. Jacqueline Carr represents Parish Council District 13.

On September 11, 1982, the people of the Parish voted to repeal their home rule charter. On October 18, 1982, suit (*Vinturella v. Unangst*) was filed contesting this election.

On January 20, 1983, the Council adopted an ordinance to reapportion the 14 single member districts based on the 1980 census. This ordinance provided that the districts established would be "the Districts, for which persons shall qualify for election therefrom to the governing body of St. Tammany Parish, La., to take office on the 2nd. Monday in January, 1984".

By letter dated May 31, 1983, the United States Department of Justice (Justice) advised the Council that it did not interpose any objection to the charter repeal election of September 11, 1983, or the change back to the Police Jury form of government.

On June 16, 1983, the trial in *Vinturella v. Unangst* was held in the district court. On July 12, 1983, the trial judge ruled that the charter repeal election was valid. On July 22, 1983, an appeal of that judgment was taken to this court.

The qualifying period for candidates for the 14 seats on the Parish governing authority was July 25-29, 1983. On July 25, 1983, Jacqueline Carr qualified for the office of "POLICE JUROR/COUNCIL MEMBER, DISTRICT 13, ST. TAMMANY PARISH, LOUISIANA, PRESENT PLAN". By letter dated July 26, 1983, the Attorney General of Louisiana advised the St. Tammany Parish District Attorney that since neither the Police Jury plan of government nor the 1983 reapportionment plan had been approved by Justice, the Parish was still under the councilmanic form of government, the reapportioned new Police Jury districts were not in effect, qualification papers should be accepted by the Clerk of Court for either councilman or police juror, a candidate who qualified for councilman could convert to police juror if the plan of government were approved and a candidate would run in the new Police Jury district if the reapportionment were approved.

On July 27, 1983, Carr requalified for the office of "Councilman Dist. 13 (redistricting plan in effect for the 1979 councilmanic elections, present district represented)". Her qualifying papers of July 25, 1983 were voided.

On July 27, 1983, Stanford Allen Owen qualified for "Parish Council Member-District 9". On July 28, 1983, Joseph M. Shoemaker, Jr. qualified for "Councilman District #9". On July 29, 1983, Raymond W. Ward qualified for "Parish Councilman, District 13", Janice Marline Houston qualified for "Parish Council District 13", and Willard J. Nolan qualified for "COUNCILMEMBER DISTRICT 13".

By letter dated August 1, 1983, Justice advised the Council that it did not interpose any objection to the redistricting of the councilmanic districts.

On August 3, 1983, six of the candidates for the St. Tammany Parish governing authority filed suit (*Sharp v. Brown*) in the 19th Judicial District Court, Parish of East Baton Rouge, seeking to enjoin the October 22, 1983 primary election. Carr was not a party to this suit. The suit alleges that the judgment in *Vinturella v. Unangst* was on appeal and not final; the Attorney General of Louisiana advised that the Parish was still under the councilmanic form of government and that candidates for the parish governing authority could qualify for both councilman and police juror; the filing fee for these positions is different; the candidates qualified for the old districting plan; the new districting plan was approved after qualifying was closed and the candidates are now qualified in districts that no longer exist; and some candidates qualified for the offices of parish president and councilman-at-large which no longer exist. The suit asked that the Secretary be enjoined "from holding said election until it is determined which form of government, the Home Rule Charter or the Police Jury, shall govern this Parish and until this court can order qualifying reopened to allow qualifying in the districts as they now exist." On August 9, 1983, the Clerk of Court of St. Tammany Parish (Clerk) intervened and requested that she either be ordered to recertify the candidates in the new districts or reopen the qualifying period to allow candidates to qualify in their correct districts. Also on August 9, 1983, candidate Schwehm intervened and objected to delaying the scheduled primary election. The original plaintiffs amended their petition on August 12, 1983, to provide that since the filing of the original petition they learned that the Police Jury plan of government was given preclearance by Justice by letter dated May 31, 1983; the qualifying for candidates for the governing authority of St. Tammany Parish should be for police juror in the new districts; and the Secretary should be enjoined from printing the ballots for the October

22, 1983 election until either the Clerk recertifies the candidates for the office of police juror in the new districts or the qualifying period was reopened and the candidates qualified for the proper office in the proper district. On August 17, 1983, a consent judgment was rendered in *Sharp v. Brown* ordering the Clerk to recertify the persons who qualified for the offices of councilman in the Parish as properly qualified for police juror in the new Police Jury districts. The Secretary was ordered to accept the recertification and print the election ballots accordingly. Carr, Ward and Nolan were recertified in the new District 13. Houston was recertified from old District 13 to new District 10. Owen and Shoemaker were recertified from old District 9 to new District 13.

Substantial differences exist between the old District 13 and the new one. The new one only has approximately one-sixth of the same geographical area of the old one, has approximately 3300 less people and has 50,000 more acres. Carr lives in the common one-sixth portion of each district.

Carr first received actual knowledge of the judgment in *Sharp v. Brown* in the latter part of August 1983. Carr has not received legal notice of that ruling.

This court affirmed the trial court judgment in *Vinturella v. Unangst* on September 13, 1983. See ____So.2d ____ La.App. 1st Cir. 1983).

This suit was filed on September 19, 1983. The trial court judgment was signed on September 23, 1983, and the order of appeal was signed that same day.

CONSTITUTIONALITY OF FIVE-JUDGE PANEL

La. Const. of 1974, art. V. §8(A) provides that each court of appeal "shall sit in panels of at least three judges selected according to rules adopted by the court." By Act 506 of 1980, effective January 1, 1981, in all election cases involving objections to candidacy and contests of elections, the courts of appeal of Louisiana were required to sit and render judgment en banc. La.R.S. 18:1409(H). This legislation is constitutional. *Regira v. Falsetta*, 405 So.2d 825 (La. 1981); *Carrere v. Castano*, 397 So.2d 798 (La. 1981); Hargrave, *Louisiana Constitutional Law*, 43 La.L.Rev. 505-506 (1982). See also Rule 1-5, Uniform Rules, Court of Appeal. By Act 137 of 1983, effective June 24, 1983, La.R.S. 18:1409(H) was amended to provide as follows:

> The appellate court shall sit en banc in all election contests involving candidates for offices voted on throughout the state or throughout a congressional district, justice of the supreme court, judge of a court of appeal, membership on a state board or commission, district judge, district attorney or membership in the state legislature. In all other cases arising under this Chapter, the court may sit in panels of three or more as directed by the chief judge.

Carr contends that Act 137 of 1983 discriminates against local elected offices, is a suspect classification impinging on a fundamental right and is unconstitutional as a violation of the equal protection clauses of the United States and Louisiana Constitutions. Carr cites no federal or state jurisprudence to support this contention.

The law applicable to such a claim is accurately set forth in

Williams v. Lallie Kemp Charity Hospital, 428 So.2d 1000, 1009-1010 (La.App. 1st Cir. 1983), writ denied 434 So.2d 1093 (La. 1983), as follows:

> The Louisiana and federal constitutions both require equal protection of the laws. U.S. Const. Amend. XIV; La. Const. art. I, §3. When a claim is made that a law violates these provisions, and the claimant belongs to a class receiving disparate treatment, a determination must be made as to whether the law impinges on a "fundamental right" or operates to the disadvantage of some "suspect class." If the law does either of the above, it will be subject to strict scrutiny and be declared invalid unless it is shown that a "compelling governmental interest" exists; if neither a suspect class nor a fundamental right is involved, the test is whether the discriminatory treatment is supported by any rational basis reasonably related to the governmental interest sought to be advanced by it.
>
> . . .
>
> Suspect classes are those so recognized by the Supreme Court, and they involve classifications based on race, alienage, national origin, or some other attribute held by discrete and insular minorities.
>
> . . .
>
> The number of fundamental rights is likewise finite. Those that have been recognized include free speech, voting, interstate travel,

> fairness in the criminal process, fairness in procedures concerning governmental deprivations of life, liberty or property, and privacy.

Local governmental subdivisions and political subdivisions, as those terms are defined in La. Const. of 1974, art. VI, §44(1) and (2), are not a suspect class recognized by the jurisprudence. There is no fundamental right to have a certain number of judges on an appellate court hear a person's case (except the minimum number of three for the courts of appeal and the mandatory en banc for the Supreme Court required by the Louisiana Constitution). The Louisiana Constitution specifically authorizes the courts of appeal to sit in panels of three or more. Since Carr's alleged discrimination does not involve a fundamental right or a suspect class, we must only determine if the discriminatory treatment provided by Act 137 is supported by any rational basis reasonably related to a governmental interest.

La.R.S. 18:1409(F) requires courts of appeal to hear an election case involving an objection to candidacy or a contest of an election within 48 hours after the record is lodged and render a judgment within 24 hours after the case is argued. This is an expedited appeal that takes priority over other matters. The judges of the courts of appeal must leave their routine duties and assemble at the seat of the court to accommodate this requirement of the law. Because of the numerous elected state and local offices in this State, there are numerous election suits. The workload of the courts of appeal was significantly increased with the transfer of the criminal jurisdiction on July 1, 1982. To secure relief from this increased burden and the disruptions of the ordinary decision making process caused by election suits, the legislature of Louisiana, in part at the request of the courts of appeal,

enacted Act 137. The distinction provided by Act 137 between candidates entitled to an en banc panel and those entitled only to a panel of three or more is essentially drawn (although not precisely) between offices in the executive, legislative and judicial branches of state government and offices of local government. (Compare Articles III, IV and V of the Louisiana Constitution of 1974 with Article VI.) The number of elected offices in the first category is significantly less than those in the latter. Act 137 provides significant relief to the heavy case burden presently carried by the courts of appeal of Louisiana, reduces disruption to the normal decision making process and does not affect the quality of justice. This is a rational basis reasonably related to a governmental interest. Act 137 is constitutional.

ENTITLEMENT TO INJUNCTION

Carr objects to her own candidacy [La.R.S. 18:1401(A)] because she was recertified from candidate for Parish Council in old District 13 to candidate for Police Jury in new District 13 pursuant to a judgment rendered in litigation (*Sharp v. Brown*) to which she was not a party. Carr contends she is entitled to an injunction to prevent irreparable injury because she has been ordered to run in a district in which she does not choose to run. La.C.C.P. art. 3601; La.R.S. 18:1414; Cf. *Perez v. Edwards*, 336 So.2d 1072 (La.App. 1st Cir. 1976), writs refused 337 So.2d 519, 872 (La. 1976). Carr cogently argues that the judgment in *Sharp v. Brown* is not binding on her because she was not a party to the suit. However, even if we assume this contention correct, Carr fails to demonstrate irreparable injury, loss or damage. When this suit was filed, the 1983 reapportionment plan and the Police Jury form of government had been approved by Justice and this Court had upheld the validity of the Home Rule Charter repeal election. The *Sharp v. Brown* judgment recertified Carr

as a Police Jury candidate in the new District 13 *where she was domiciled* because the old District 13 and the councilmanic form of government no longer existed. If Carr did not choose to run in the new District 13, she could have withdrawn her candidacy. La.R.S. 18:501-502.

The most serious claim urged by Carr is that as the incumbent from old District 13, she was entitled to run for office in any district carved out of that district, that she could have qualified in one of five new districts and that the judgment in *Sharp v. Brown* deprived her of the opportunity to do so. A candidate for parish governing authority in the next regular election following reapportionment of a district may qualify to run in any new district created in whole or in part by the reapportionment of the old district, if the candidate had been domiciled in the old district for at least one year immediately preceding his qualification. La. Const. of 1974, art. III, §4(A) and (B); La.R.S. 33:1225; *Nicholson v. Grisaffe*, ____So.2d ____(La. 1983), (decided August 31, 1983, under Docket No. 83-C-1829); *McCarter v. Broom*, 377 So.2d 383 (La.App. 1st Cir. 1979); *Toldson v. Fair*, 374 So.2d 759 (La.App. 2nd Cir. 1979), writ denied 375 So.2d 1182 (La. 1979). Justice did not approve the 1983 reapportionment plan and Carr was not recertified into the new District 13 until after the close of qualifications for office. Carr had the right to elect in which district she would run after these events occurred. Although La.R.S. 18:469 only provides for the reopening of the qualifying period when a candidate in a primary election dies or no candidate has qualified, this statute cannot be interpreted to deprive a candidate of the right to elect which district in which to run granted by Article 3, Section 4 of the Louisiana Constitution. However, Carr has not attempted to exercise this right. She has not withdrawn her candidacy from the new District 13 and she has not attempted to requalify in another authorized district. Carr has not requested in the trial court or this court

that she be allowed to do so. Had Carr attempted to do these things and been denied the right to do so, this case would be in a different posture. Because she did not, she cannot now prevail. Even if Carr had done these things, she would not be entitled to enjoin all of the district elections in the Parish. She would only be entitled to enjoin the election in the district in which she elected to run.

Carr asserts in her petition that the 1983 reapportionment plan for the Parish governing authority is unconstitutional because it does not adhere to the "one man-one vote" concept. Carr also alleges that she has filed a complaint in federal district court to enjoin the election on that basis. In the prayer of her petition, Carr seeks to enjoin the primary elections for the Parish governing authority until a proper reapportionment plan is adopted.

The reapportionment of the Parish governing authority was the subject of a 1979 federal court judgment. Any change in that plan must be approved by the federal court. 42 U.S.C. 1973, *et seq*. We are not the proper forum to grant this portion of the relief sought.

CONCLUSION

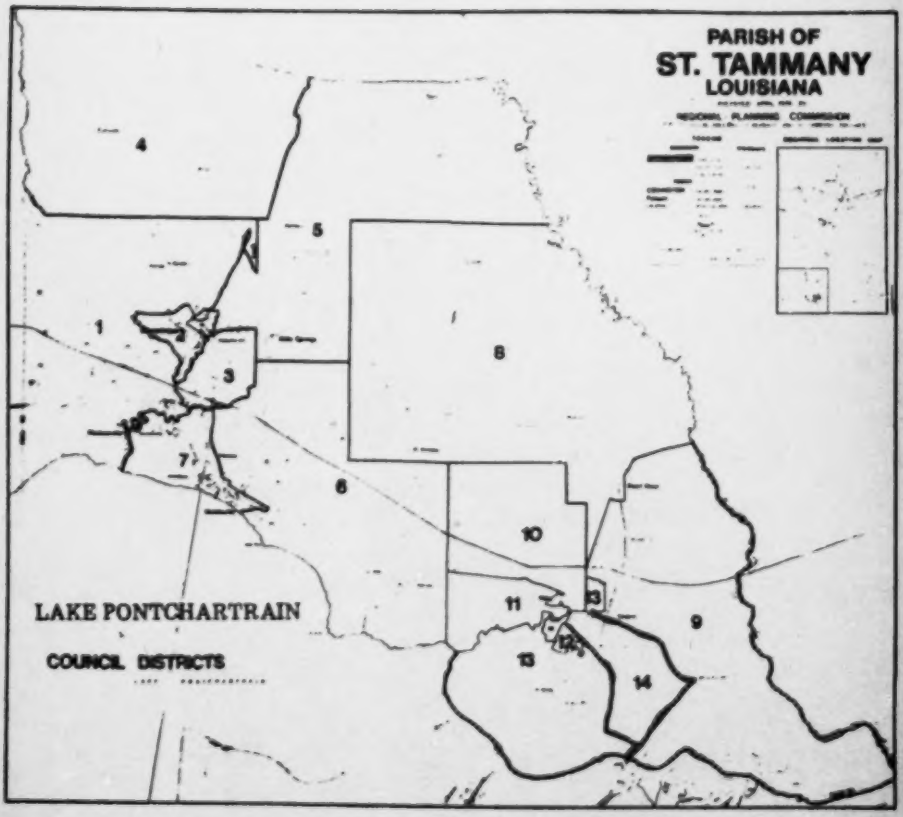
For the foregoing reasons, the judgment of the trial court dismissing Carr's petition for an injunction is affirmed at her costs.

AFFIRMED.

Dated October 4, 1983

A-26

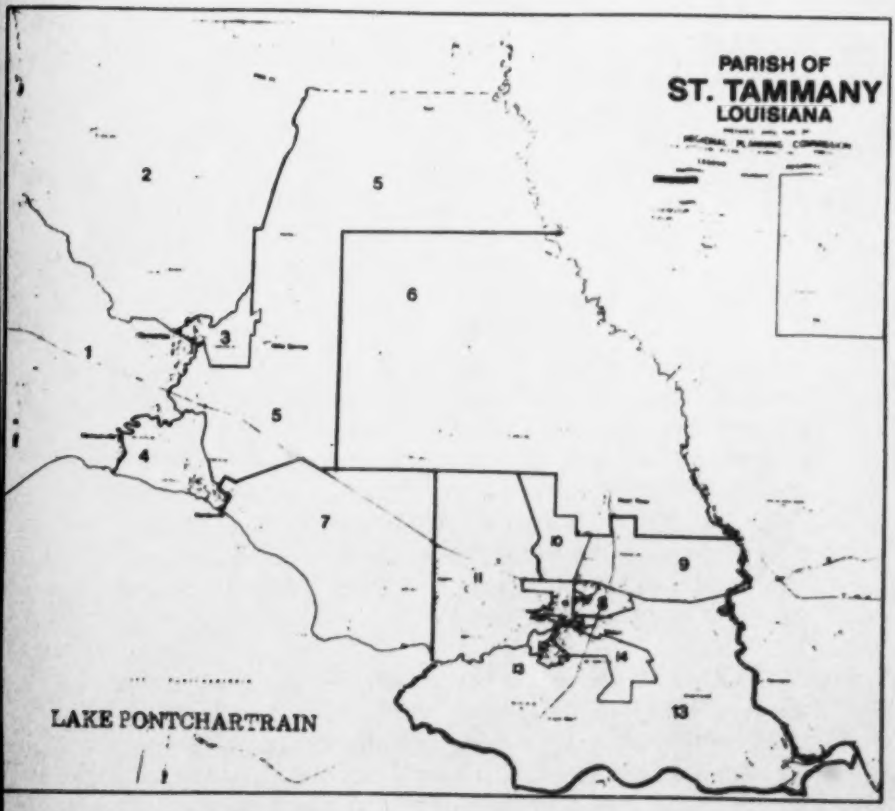
1979


PARISH OF
ST. TAMMANY
LOUISIANA
LAKE PONTCHARTRAIN
COUNCIL DISTRICTS
1
2
3
4
5
6
7
8
9
10
11
12
13
14

P-L

A-27

1983


PARISH OF
ST. TAMMANY
LOUISIANA
LAKE PONTCHARTRAIN
1
2
3
4
5
6
7
9
10
11
12
13
14

P-J

WBR: SSC: TGL: dvs
DJ 166-012-3
HO553-0555
H2088-2091

Washington, D. C. 20530

May 31, 1983

Mr. W. A. "Pete" Fitzmorris
Council Chairman
St. Tammany Parish
P.O. Box 459
Covington, Louisiana 70434

Dear Mr. Fitzmorris:

This is in reference to the April 30, 1983, referendum election; the home rule charter; the September 11, 1982, charter repeal election; the two changes in the form of government; the decrease in the number of police jurors; and the change in the method of electing councilmembers in St. Tammany Parish, Louisiana submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on April 1, 1983.

The Attorney General does not interpose any objections to the April 30, 1983, referendum election, the September 11, 1982, charter repeal election, and the change to police jury form of government. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.48).

Because the home rule charter and the changes affecting voting therein (*i.e.*, form of government, method of electing councilmembers, and the decrease in the number of police jurors) failed to receive voter approval at the April 30, 1983, referendum election, the Attorney General will make no determination with respect to these matters. See also 28 C.F.R. 51.14. However, any future attempt to implement these changes will be subject to the preclearance requirements of Section 5.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

By: Sandra Coleman
for Gerald W. Jones
Chief Voting Section

STATE OF LOUISIANA
DEPARTMENT OF JUSTICE
BATON ROUGE
70804

July 26, 1983

OPINION NO. 83-633

Mr. James R. Jenkins
Assistant District Attorney
St. Tammany Parish
428 E. Boston
Covington, Louisiana 70433

Dear Mr. Jenkins:

This is in response to your request for an opinion regarding qualifying in St. Tammany Parish. Specifically, you asked:

> 1. Is the approval of the United States Justice Department required before St. Tammany Parish can effectively convert from a home rule charter form of government back to the police jury system?
>
> 2. Before the approval of the United States Justice Department is received, should candidates qualify for the council or as police jurors?
>
> 3. If a candidate qualifies as a candidate for the council, can he become a candidate for police juror on the ballot if the Justice Department approves the change to a police jury system?

4. If the reapportioned districts are not approved by the Juctice Department must the candidates run from the old, existing districts?

This office has been in contact with the United States Department of Justice relative to your initial inquiry. In accordance with the Voting Rights Act of 1965, as amended, a change from any present practice that affects any voting qualification, standard, practice, or procedure with respect thereto must either be submitted to the Attorney General for preclearance or be the subject of a declaratory judgment from the U.S. District Court for the District of Columbia. However, the Voting Rights Act does not apply to voting practices existing prior to November 1, 1964. Obviously the police jury sustem of government predates 1964. That system was operating in St. Tammany until 1980. Even so, the Justice Department has indicated that St. Tammany's conversion back to the police jury system constitutes a change from a present practice and therefore is subject to the preclearance requirements of the Voting Rights Act. This office has requested and should be receiving the Justice Department's written confirmation of this policy.

In response to your second question, since the proposed plan of government for St. Tammany Parish has not been precleared, the parish is still under the councilmanic form of government. Therefore, this office would recommend that the candidates qualify for *council* and pay the qualifying fee of one hundred fifty dollars in order to avoid any question of their eligibility. The qualifying fees, as set forth in R.S. 18:464, require candidates for police juror to pay only seventy-five dollars. If a candidate were to qualify as a police juror and the Justice Department does not approve the conversion to the police jury system, a serious question could arise as to the candidate's eligibility to then run for

the council, inasmuch as he had not paid a sufficient qualifying fee.

However, the clerk of court operates in a ministerial capacity in accepting qualifying papers. Therefore, even though the police jury plan of government is not yet in effect, the clerk should accept a candidate's qualifying papers for either position (i.e. councilman or police juror). (See R.S. 18:461 and 18:462).

On the basis of the court's decision in *Roe v. Picou*, 361 So.2d 874 (LA 1978), where confusion exists as to a candidate's proper district designation, a candidate could qualify as a councilman and later convert to a candidate for police juror. In the present case, the Justice Department has not yet approved the reapportionment plan of St. Tammany Parish. The approval may come during the interval between qualifying and the election. If the districts are approved by the Justice Department before the election, a candidate would be able to run for the position of police juror from his newly created district even though he originally qualified as a councilman from the present district scheme, provided further that the United States Justice Department also approves the change to the police jury form of government.

In conclusion, this office has been advised by Carl Gabel, Director of the Section 5 Unit, United States Department of Justice, that St. Tammany Parish's conversion from a council form of government back to a police jury system must be submitted for preclearance to the United States Attorney General. Until the plan is approved the parish will continue to be governed by the council.

The proposed plan of government is ineffective until it receives preclearance. Therefore, candidates should qualify for the council.

Candidates who have qualified for councilman would be able to convert to police juror if the proposed plan of government is approved prior to the election. If the reapportioned districts are not approved prior to the election, then the candidates would run from the present council districts.

Sincerely,

/s/ William J. Guste, Jr.
WILLIAM J. GUSTE, JR.
Attorney General

WJGJr/KCD/CDY/lg

cc: Honorable James H. Brown
Secretary of State

Honorable Lucy Reid Rausch
Clerk of Court
Parish of St. Tammany

EXHIBIT B
P-H

ST. TAMMANY PARISH

W. A. "Pete" Fitzmorris
Council Chairman
Richard E. Tanner
Council Vice Chairman
Floyd D. Glass, Dist 1
J.A. "Red" Thompson, Dist 2
John B. Vinturella, Dist 3
Herman Sharp, Dist 4
Opise Richardson, Dist 5
James B. Smith, Dist 6
Robert H. Fry, Dist 7
M. P. Blackwell, Dist 8
Virginia F. Benson, Dist 9
Wayne Watkins, Dist 10
Armand L. Pichon, Jr., Dist 11
Earl D. Broom, Dist 12
Jacqueline Carr, Dist 13
Anthony Alfred, Dist 14

Lee C. Grevemberg
Clerk of the Council
Barbara S. Jenkins
Asst. Clerk of the Council

July 28, 1983

Mr. Carl Gabel
Director of the Section 5 Unit
U.S. Department of Justice
Washington, D. C. 20530

Re: Submission of Preclearance
request for conversion from

the Council-President form of
Government to a Police Jury form
of Government under the 1964
Voting Rights Act

Dear Mr. Gabel:

This correspondence is in response to a request conveyed to Mr. James R. Jenkins, St. Tammany Parish Assistant District Attorney by Mr. William J. Guste, Jr., Attorney General for the State of Louisiana: Opinion No. 83-633 dated July 26, 1983, (Attachment "A") by Mr. Guste, conveyed the Justice Departments request that St. Tammany Parish submit for preclearance the Parish's return to a Police Jury system of government from the current Council-President form of government to the U.S. Attorney General.

The St. Tammany Parish Council on April 22nd, 1982 adopted Ordinance Calendar No. 411 calling for a special election on Saturday, September 11, 1982 to decide (Certified copy Attachment B) the proposition to Repeal the Home Rule Charter for St. Tammany Parish. Ordinance Calendar No. 411 was subsequently approved by the St. Tammany Parish President on May 11, 1982, was duly published, and assigned (to be Ordinance Council Series No. 82-356.

The proposition appeared on the September 11, 1982 Ballot and was approved by the registered voters of St. Tammany Parish as evidenced in the proces verbal, Resolution Council Series No. 82-1084 (Attachment C), and by the State of Louisiana Secretary of State, James H. "Jim" Brown.

The parish's revocation of the Home Rule Charter (Attachment D) which has been in effect since June 30, 1980 returns the parish to a Police Jury Form of Government which is

regulated by Louisiana Revised Statutes. The Parish was under the Police Jury system of government prior to the institution of the Home Rule Charter and was in effect at the time of passage of the 1964 Voting Rights Act. As such it is our opinion that the Police Jury Form of government is exempt from preclearance under the Voting Rights Act since it existed at the time of the Act's adoption.

The Police Jury form of government for St. Tammany Parish provides for fourteen single member districts just as the Council-President form of government does. The Louisiana Revised statutes which regulate Police Juries do not provide for at-large council members or for the office of Parish President. Under the Police Jury form of government these Offices would be eliminated.

It should be noted that the U.S. Department of Justice is currently considering a request for preclearance from St. Tammany Parish on reapportionment. This request was submitted on February 15, 1983.

While the parish recognizes the Justice Department's 60 day review period, for such requests, it is imperative that this request receive prompt attention due to the fact that the state has scheduled elections for October 22, 1983 and the positions for the parish legislative body are scheduled to be on the ballot. Without the benefit of a prompt reply the voters of St. Tammany would be exposed to the burden and costs of a special election.

While it is the opinion of the parish that preclearance on the change in government is not required since the Police Jury form of government was in effect at the adoption of the Voting Rights Act and is hence exempt. However, we are submitting this request for preclearance on the advice of the State Attorney General, William J. Guste, Jr.

If there is any additional information or documentation required concerning this matter I would like to request that you contact myself or the office of clerk of council immediately in the hopes of avoiding any unnecessary delay.

Respectfully submitted,

W. A. "Pete" Fitzmorris,
Council Chairman

cc: Hon. William J. Guste, Jr., Attorney General for the State of Louisiana
Hon. James R. Jenkins, Asst. District Attorney, St. Tammany Parish
All St. Tammany Parish Council Members

Attchs: A-Opinion No. 83-633
B-Ord. Cal. 411
C-Resolution Council Series No. 821084
D-Home Rule Charter

WBR:SSC:TGL: gml
DJ 166-012-3
G9147

Washington, D. C. 20530

August 1, 1983

Mr. W. A. "Pete" Fitzmorris
Council Chairman, St. Tammany Parish
Post Office Box 459
Covington, Louisiana 70434

Dear Mr. Fitzmorris:

This is in reference to the redistricting of councilmanic districts (Ordinance No. 83-514) in St. Tammany Parish, Louisiana, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your initial submission on June 2, 1983; supplemental information was received on June 4 and 8, 1983.

The Attorney General does not interpose any objection to the change in question. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.48).

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

By: /s/
for Gerald W. Jones
Chief, Voting Section

EXHIBIT E

P-N

WBR:CWG:NG:pdk
DJ 166-012-3
H7383

Washington, D. C. 20530

October 28, 1983

James R. Jenkins, Esq.
Assistant District Attorney
St. Tammany Parish
428 East Boston Street
Covington, Louisiana 70433

Dear Mr. Jenkins:

This is in reference to the recertification procedures in St. Tammany Parish, Louisiana, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on October 20, 1983. In accordance with your request, expedited consideration has been given this submission pursuant to the Procedures for the Administration of Section 5 (28 C.F.R. 51.32).

The Attorney General does not interpose any objection to the change in question. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such change. In addition, as authorized by Section 5, the Attorney General reserves the right to reexamine this submission if additional information that would otherwise require an objection comes to his attention during the remainder of the sixty-day review period. See also 28 C.F.R. 51.42 and 51.48.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

BY: /s/ Gerald W. Jones
Gerald W. Jones
Chief, Voting Section

SUPREME COURT OF THE UNITED STATES
No. A-563

POLEATE BAHAM, JR., ET AL.,
Appellants

v.

DAVID C. TREEN, FORMER GOVERNOR OF LOUISIANA, ET AL.

ORDER

UPON CONSIDERATION of the application of counsel for the appellants,

IT IS ORDERED that the time for docketing an appeal in the above-entitled cause be, and the same is hereby, extended to and including February 13, 1984.

/s/ Byron R. White
Associate Justice of the Supreme Court
of the United States

CANDIDATES WHO HAVE QUALIFIED FOR THE OFFICES OF PARISH COUNCILMAN OR POLICE JUROR AND THEIR RESPECTIVE DISTRICTS UNDER THE OLD DISTRICTING PLAN AND THE DISTRICTING PLAN NOW IN EFFECT

CANDIDATES	NEW DISTRICTING PLAN	OLD DISTRICTING PLAN
Floyd Glass	1	1*
Robert Sumrall	1*	2*
Red Thompson	3	2*
Ronald Villere	1	2*
G.C. Alexius	5	3*
Phomie Armstrong	3	3*
Lawrence Camaille	5	3*
Edward Hutchinson	5	3*
Frank Perkins	3	3*
Herman Sharp	2	4*
Clyde Keating	2	4*
Ogise Richardson	5	5*
Tom Aickler	7	6*
Angelo Bosco	7	6*
Robert E. Davis	5	6*
Clifton Dunaway, Jr.	7	6*
Henry Meiners, Jr.	5	6*
Samuel Woodruff, Jr.	7	6*
Bob Fry	4	7*
Lee Grevenberg	4	7*
Wilfred Griffin	4	7*
Prentiss Blackwell	6	8*
Dalton W. Craddock	6	8*
Gary Singletary	6	8*
Earl J. Adams	9	9
Barry D. Bagert	9	9*
Stanford Owen	13	9*
Jerry Schwehn	8	9*

Joseph Schoemaker	13	9*
Stephen Stinson	9	9*
Dewey Little	12	10*
Elizabeth Teague	11	10*
Wayne Watkins	10	10*
William Watson, Jr.	12	10*
Lionel Price	10	10*
Armand Pichon	11	11*
Earl Broom	12	12*
Valsin Vanney	12	12*
Janice Houston	10	13*
Willard J. Nolan	13	13*
Jacqueline Carr	13	13*
Raymond Ward	13	13*
Anthony Alfred	14	14*

*Denotes the District in which the candidate qualified.

Filed in Evidence
Exhibit P-K
Date Aug. 12, 1983
Marie L. Luther
Deputy Clerk

NUMBER 83-1346

United States Supreme Court

OCTOBER TERM, 1983

POLEATE BAHAM, JR.
IRVEN COUSIN, AND
JACQUELINE CARR

VERSUS

HON. DAVID C. TREEN, GOVERNOR,
STATE OF LOUISIANA
HON. WILLIAM FRENCH SMITH, ATTORNEY GENERAL
OF THE UNITED STATES
HON. WILLIAM J. GUSTE, JR., ATTORNEY GENERAL,
STATE OF LOUISIANA
HON. BRUCE E. UNANGST, PRESIDENT
ST. TAMMANY PARISH COUNCIL
HON. W.A. "PETE" FITZMORRIS, CHAIRMAN
ST. TAMMANY PARISH COUNCIL
HON. JAMES H. BROWN, SECRETARY OF STATE,
STATE OF LOUISIANA
HON. JERRY FOWLER, COMMISSIONER OF ELECTIONS,
STATE OF LOUISIANA
HON. LUCY REID RAUSCH, CLERK OF COURT,
PARISH OF ST. TAMMANY,
22ND JUDICIAL DISTRICT COURT

Motion to Dismiss on Direct Appeal from the United States District Court for the Middle District of Louisiana

CHARLES L. PATIN, JR.
Chief, Civil Division

CYNTHIA D. YOUNG
Assistant Attorney General
Louisiana Department of Justice
P.O. Box 44005, Capitol Station
Baton Rouge, LA 70804
Telephone: (504) 342-7013

TABLE OF CONTENTS

	Page
Table of Authorities	ii
Motion to Dismiss On Behalf of State Defendants	1
Facts in Support of Motion to Dismiss on Behalf of State Defendants	3
Arguments of Law in Support of Motion to Dismiss	7
Affidavit of Service	10

TABLE OF AUTHORITIES

CASES: *Page*

Allen v. State Board of Elections
393 U.S. 544, 89 S.Ct. 817
22 L.Ed. 1 (1969) 8
Herron v. Koch,
523 F.Supp. 167 (D.C. N.Y. 1981) 4
Morris v. Gressette,
432 U.S. 491
97 S.Ct. 2411, 53 L.Ed. 2d 506 (1977) 8
Roe v. Picou,
361 So.2d 874 (LA 1978) 6
Ward v. Dearman,
626 F.2d 489 9

OTHER:

L.S.A. Revised Statutes 18:461 ..... 3, 5
L.S.A. Revised Statutes 18:462 ..... 3, 5
L.S.A. Revised Statutes 18:468 3
L.S.A. Revised Statutes 18:469 6
Section 5, Voting Rights Act of 1965 ..... 3, 4, 7, 8
L.S.A. Revised Statutes 18:470 5

POLEATE BAHAM, ET AL

VERSUS UNITED STATES SUPREME COURT

DAVID C. TREEN, ET AL. NUMBER 83-1346

* * * * *

**MOTION TO DISMISS
ON BEHALF OF STATE DEFENDANTS–
APPELLEES**

NOW INTO COURT, through undersigned counsel come Governor David C. Treen, Attorney General William J. Guste, Jr., Secretary of State James H. Brown, and Commissioner of Elections Jerry Fowler, State defendants-appellees, who, in response to the appellants' jurisdictional statement, move this Honorable Court to dismiss the appellants' appeal on the following grounds:

I.

The appeal is not within this Court's jurisdiction.

II.

The substantive issue before this Court is moot.

WHEREFORE, the State defendants-appellees pray that, for the above cited reasons, the plaintiffs-appellees' appeal be dismissed.

Respectfully submitted,
WILLIAM J. GUSTE, JR.
Attorney General

BY: _____
CHARLES L. PATIN, JR.
Chief, Civil Division

CYNTHIA D. YOUNG
Assistant Attorney General
Louisiana Department of Justice
P.O. Box 44005, Capitol Station
Baton Rouge, LA 70804
Telephone: (504) 342-7013

POLEATE BAHAM, ET AL

VERSUS NUMBER 83-1346

DAVID C. TREEN, ET AL

* * * * *

FACTS IN SUPPORT OF THE STATE DEFENDANTS-APPELLEES' MOTION TO DISMISS

On July 25, 1983, qualifying began for those wishing to become candidates in the October 22, 1983, Louisiana elections. Among those to be elected were the members of the St. Tammany Parish governing authority.

"Qualifying" is a statutory term, set forth in L.S.A. R.S. 18:461, requiring that:

> A person who desires to become a candidate in a primary election shall qualify as a candidate by timely filing notice of his candidacy, which shall be accompanied either by a nominating petition or by the qualifying fee and any additional fee imposed.

The candidates in St. Tammany Parish were authorized to qualify before either the parish clerk of court, defendant-appellee Lucy Reid Raush, or with the president or secretary of the St. Tammany Parish Board of Election Supervisors. [L.S.A. R.S. 18:462]. Qualifying ended, in accordance with L.S.A. R.S. 18:468, at 5:00 p.m. on July 29, 1983.

Notices of candidacy from St. Tammany Parish designated the parish council as the office sought.

Prior to qualifying week St. Tammany Parish had made two submissions to the United States Attorney General, pursuant to Section 5 of the 1965 Voting Rights Act, as amended. The initial submission related to a

change in the form of government for the parish. The parish governing authority was, at that time, operating under a charter. The governing body was designated a council. The parish had voted however, to return to a "police jury" form of government.

On the basis of Section 5 of the 1965 Voting Rights Act, as amended, any change in the structure of a governing body is subject to preclearance requirements. Absent preclearance, any such change is unenforceable. [*Herron v. Koch*, 523 F.Supp. 167 (D.C. N.Y., 1981)]. In reality, St. Tammany Parish's proposed conversion from a councilmanic form of government to a police jury structure was approved May 31, 1983. Unfortunately, general knowledge of this preclearance did not come to light until after the close of qualifying. The reason for this bureaucratic mix-up has yet to be fully explained. Even so, the second of the parish's submissions was not precleared until August 1, 1983. This submission consisted of the St. Tammany Parish reapportionment plan. [Appellants' exhibits A28, A38].

On July 25, 1983, the Clerk of the court in St. Tammany Parish began accepting the candidates' qualifying papers. As the facts *then* appeared, the United States Attorney General had not approved either the conversion in the form of government or the reapportionment. Candidates were unsure how to qualify. The clerk was unsure for which offices and which districts qualifying papers should be accepted.

At the request of the Assistant District Attorney from St. Tammany Parish, Attorney General's Opinion No. 83-633 was issued. That opinion advised that without

preclearance, candidates *should* qualify for the then existing council form of government in the then existing districts. Absent preclearance, the changes were not yet effective. Even so, the opinion specifically noted that:

> . . . the clerk of court operates in a ministerial capacity in accepting qualifying papers. Therefore, even though the police jury plan of government is not yet in effect, the clerk should accept a candidate's qualifying papers for either position (i.e. councilman or police juror). (See R.S. 18:461 and 18:462). [Appellants' exhibit A30].

Therefore, candidates *were not precluded* from qualifying under the new plan of government. They were simply advised that, under federal law, the plan was technically not yet in effect. Candidates then changed their qualifying papers in an effort to comply with the law.

By August 1, 1983, by the actions of the United States Department of Justice in granting the necessary preclearance, St. Tammany Parish's council form of government had become replaced by a policy jury system. St. Tammany Parish's former district lines had been replaced by a new reapportionment. Elections were coming up in less than three months. Candidates were, in essence, qualified for offices that did not exist in districts that did not exist.

Pursuant to R.S. 18:470 the clerk of court was required to certify the candidates to the Secretary of State. Several of the candidates then filed suit against the Secretary of State seeking to be recertified as police juror candidates instead of council candidates. [Sharp v. Brown, Docket #269,284, 19th Judicial District Court, Parish of East Baton Rouge, State of Louisiana].

By ordering the recertification of the candidates the court was, in effect, interpreting law, not creating a new election procedure. The Louisiana Supreme Court had previously ruled in *Roe v. Picou*, 361 So.2d 874 (LA 1978), that where confusion exists as to a candidate's proper designation, a candidate could qualify as a councilman and later convert to a police jury candidate.

There was, in addition, no authority for the district court to reopen the qualifying period. As was stated above, qualifying is statutorily set. The qualifying period may only be reopened, in accordance with L.S.A. R.S. 18:469, if a candidate in the primary election dies or the number of candidates who have qualified is fewer than the number of offices available.

There is no authorization in state law for the Secretary of State to print names on the ballot for offices that do not exist. On August 17, 1983, the trial court in *Sharp*, supra, merely implemented the preclearances of the United States Department of Justice.

Significantly, the trial court in *Sharp*, supra, expressly stated that the recertification judgment would not be res judicata to any of the recertified candidates who had not actually been made parties thereto. Therefore, at anytime any of those candidates, including Jacqueline Carr, could have gone to court and asked to be placed in a different district or any candidate could have, within statutory time limits withdrawn from the race. No such action was taken by any candidate.

Instead, Appellant Carr sought to enjoin the election. The state courts denied this relief.

In September of 1983, the appellants herein filed suit

in the United States District Court for the Middle District of Louisiana. The plaintiffs therein sought a temporary restraining order to block the October 22, 1983, elections in St. Tammany Parish. This request was denied on October 12, 1983. On October 18, 1983, a three-judge court denied the plaintiffs' request for a preliminary injunction. The election then proceeded as scheduled.

The plaintiffs had requested a three-judge court, alleging that the election must be enjoined because the recertification of candidates required submission under the 1965 Voting Rights Act, as amended. However, prior to a hearing on the merits of the plaintiffs' case, St. Tammany Parish voluntarily submitted for preclearance the recertification of candidates to the United States Attorney General. The three-judge court in Baham v. Treen expressed no opinion on the merits of the suit but instead, in denying the plaintiffs' injunction, stated that if a submission of the recertification was made prior to a hearing on the merits and preclearance was granted, then:

> . . . *the substantive question before the Court will be moot.* Such submission, if it occurs, shall be completely without prejudice to the claims of defendants or the motion that submission was not required by law. [Appellants' exhibit A-3, A-4]

On October 28, 1983, the United States Attorney General precleared the recertification procedure in question [Appellants' exhibit A-40]. The District Court then, in accordance with its order of October 18, 1983, cancelled the scheduled hearing on the merits.

ARGUMENTS OF LAW

The United States Supreme Court lacks jurisdiction

over this appeal. Any such appeal should properly be before the Fifth Circuit Court of Appeal. The issue in the plaintiffs' suit in Baham v. Treen revolved entirely around the recertification of candidates in St. Tammany Parish. Their request for a three-judge court was based on their allegation that the recertification was supposed to be submitted for preclearance pursuant to Section 5 of the 1965 Voting Rights Act, as amended.

The authority of the three-judge court may extend only to enjoin a change in voting practices or procedures which, though subject to submission, had not been precleared. [See *Morris v. Gressette*, 432 U.S. 491, 97 S.Ct. 2411, 53 L.Ed. 2d 506 (1977); *Allen v. State Board of Elections*, 393 U.S. 544, 89 S.Ct. 817, 22 L.Ed. 1(1969).] In *Allen*, 89 S.Ct. 817, 829 the court stated with reference to the convening of a three-judge court:

> First, of course, the State may institute a declaratory judgment action. *Second, an individual may bring a suit for declaratory judgment and injunctive relief, claiming that a state requirement is covered by 5, but has not been subjected to the required federal scrutiny.* Third, the Attorney General may bring an injunctive action to prohibit the enforcement of a new regulation because of the State's failure to obtain approval under S5. (Emphasis Supplied)

The only issue before the Court in Baham v. Treen was submission of the recertification procedure. The matter was rendered moot in accordance with the District Court's order of October 18, and 31, 1983. As was cited above, the substantive issue became moot on Oc-

tober 28, 1983, when preclearance was obtained. [Appellants' exhibit A40].

On the basis of the decision in *Ward v. Dearman*, 626 F.2d 489, 491 (5th Cir. 1980), any appeal of this issue should be to the Fifth Circuit Court of Appeal, not the United States Supreme Court. The Court in *Ward*, stated:

> When, however, a three-judge court dismisses a case as moot, the appeal is to the court of appeals rather than to the Supreme Court.
> . . . the Court is moving toward the position that a direct appeal will lie to it only when a three-judge court finds a substantial federal question, proceeds to decide it, and grants or denies an injunction.

For the above cited reasons, any appeal of the issue raised in Baham v. Treen should be directed first to the Fifth Circuit Court of Appeal. It is submitted that the State defendants-appellees' motion to dismiss should, therefore, be granted.

Respectfully submitted,

WILLIAM J. GUSTE, JR.
Attorney General

BY: _____

CHARLES L. PATIN, JR.
Chief, Civil Division

CYNTHIA D. YOUNG
Assistant Attorney General

Louisiana Department of Justice
P.O. Box 44005, Capitol Station
Baton Rouge, Louisiana 70804
Telephone: (504) 342-7013

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that three copies of the foregoing Motion to Dismiss on Behalf of State Defendants have been served upon all parties named herein, by service upon counsel of record representing said parties, by depositing said documents in the United States Mail, first class postage prepaid to: James R. Jenkins, Assistant District Attorney 501 E. Boston Street, Covington, LA; Jacqueline Carr, Attorney at Law, White Kitchen Square, P.O. Box 550, Slidell, LA 70459; Shelly Zwick, Assistant U.S. Attorney, 352 Florida Blvd., Baton Rouge, LA; Tom Derveloy, Attorney at Law, 202 Columbia St., Covington, LA; this ____day of April, 1984.

CHARLES L. PATIN, JR.

B-7947, 100, 4-84

NO. 83-1346

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

POLEATE BAHAM, JR.
IRVEN COUSIN, AND
JACQUELINE CARR

VERSUS

HON. DAVID C. TREEN, GOVERNOR,
STATE OF LOUISIANA
HON. WILLIAM FRENCH SMITH, ATTORNEY GENERAL
OF THE UNITED STATES
HON. WILLIAM J. GUSTE, JR. ATTORNEY GENERAL
STATE OF LOUISIANA
HON. BRUCE E. UNANGST, PRESIDENT
ST. TAMMANY PARISH
HON. W. A. "PETE" FITZMORRIS, CHAIRMAN
ST. TAMMANY PARISH COUNCIL
HON. JAMES H. BROWN, SECRETARY OF STATE,
STATE OF LOUISIANA
HON. JERRY FOWLER, COMMISSIONER OF ELECTIONS,
STATE OF LOUISIANA
HON. LUCY REID RAUSCH, CLERK OF COURT
PARISH OF ST. TAMMANY 22ND
JUDICIAL DISTRICT COURT

ON DIRECT APPEAL FROM THE ORDER DENYING
PRELIMINARY INJUNCTION FROM UNITED STATES
DISTRICT COURT MIDDLE DISTRICT OF LOUISIANA

MOTION TO DISMISS BY RESPONDENTS

JAMES R. JENKINS
Attorney for Respondents
428 East Boston Street
Covington, Louisiana 70433
(504) 892-3090

TABLE OF AUTHORITIES

Page

CASES:

Berry v. Doles, 98 S.Ct. 2692, 438 U.S. 190, 57 L.Ed.2d 693 (1978) 3

Gonzales v. Automatic Employees Credit Union, 95 S.Ct. 289, 419 U.S. 90 (1974) 3

MTM, Inc. v. Baxley, 95 S.Ct. 1278, 420 U.S. 799, 43 L.Ed.2d 636 (1975) 2

TABLE OF STATUTES:

28 U.S.C. 1253 2

42 U.S.C. 1973(C) 2

MOTION TO DISMISS

On motion of Respondents, Bruce E. Unangst, President of St. Tammany Parish and W. A. "Pete" Fitzmorris, Chairman of the St. Tammany Parish Council, appearing herein through counsel of record, James R. Jenkins, and on suggesting to this Court that the appeal of petitioners from the order denying injunctive relief before the three-judge court of the United States District Court, Middle District of Louisiana, lacks the necessary jurisdiction before this Court and accordingly, said appeal should be dismissed.

Covington, Louisiana, this 16th day of April, 1984.

James R. Jenkins
Assistant District Attorney
22nd Judicial District of Louisiana
Attorney for Respondents,
Bruce E. Unangst and
W. A. "Pete" Fitzmorris
428 East Boston Street
Covington, Louisiana 70433
(504) 892-3090

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

This action was brought by petitioners before a three-judge court seeking injunctive relief to enjoin the election held on October 22, 1983. Trial was held in this matter on October 18, 1983 after which the Court issued an order denying the petitioners' motion for a preliminary injunction. In the order of denial, the Court expressed no opinion on the merits of the case reserving such for a further hearing to be held on November 1, 1983 should the United States Justice Department refuse or fail to preclear the process of recertification of candidates. On October 28, 1983, the United States Justice Department precleared the recertification process which in accordance with the Court's order of October 18, 1983, made moot any substantive question before the Court. It is from the Court's denial of petitioners' motion for preliminary injunction that petitioners are appealing to this Supreme Court.

Petitioners are not entitled to a direct appeal to this Court from a three-judge district court when the lower court denies a preliminary injunction and disposes of the case without reaching the merits. *MTM, Inc. v. Baxley*, 95 S.Ct. 1278, 420 U. S. 799, 43 L.Ed. 2d 636 (1975). In that case, this Court held that a direct appeal based on 28 U.S.C. 1253 from an order of a three-judge federal court denying interlocutory or permanent injunctive relief will be allowed only where such order rests upon resolution of the merits of a constitutional claim. In the instant case, first, the three-judge court denied the requested relief without a decision on any of the merits and second, the Court was presented with a statutory question, that being whether 42 U. S. C. 1973(C) required preclearance from the Justice Department of the state court candidate recertification judgment. The three-judge court was not convened to hear a constitutional claim.

To allow petitioners a direct appeal to this Court would greatly enhance the mandatory docket and would therefore, be contrary to the historical policy of this Court of minimizing its mandatory docket, a policy of long standing with the Court which has also been encouraged by Congress by limiting direct appeal jurisdiction to the Supreme Court in its jurisdictional acts. See *Gonzales v. Automatic Employees Credit Union*, 95 S.Ct. 289, 419 U.S. 90(1974).

The three-judge court in its order, declared all issues in the request for injunctive relief moot upon preclearance of the state court judgment by the Justice Department. Preclearance was obtained on October 28, 1983 which made the order of mootness operational and mandatory. The three-judge court based its order on the Supreme Court decision of *Berry v. Doles*, 98 S.Ct. 2692, 438 U.S. 190, 57 L.Ed.2d 693 (1978).

Petitioners are without jurisdiction in this Court to assert their appeal. Any appeal claim they have should have been directed to the United States Court of Appeals for the Fifth Circuit, the appropriate court of jurisdiction in this particular case. Consequently, this Court should deny petitioners' appeal for the herein cited reasons and authorities.

RESPECTFULLY SUBMITTED,

James R. Jenkins
Assistant District Attorney
22nd Judicial District of Louisiana
Attorney for Respondents
428 East Boston Street
Covington, Louisiana 70433
(504) 892-3090

CERTIFICATE OF SERVICE

I CERTIFY that copies of the foregoing brief of Motion To Dismiss By Respondents have this day been served on Jacqueline Carr, Attorney for Petitioners, P.O. Box 550, Slidell, Louisiana, 70459; Cynthia Young, Assistant Attorney General, State of Louisiana, P.O. Box 44005, Capitol Station, Baton Rouge, Louisiana; Shelly Zwick, Assistant United States Attorney, 352 Florida Street, Baton Rouge, Louisiana; and Tom Derveloy, Attorney, 202 Columbia Street, Covington, Louisiana 70433, by placing said copies in the United States Mail, postage prepaid and properly addressed, this 18th day of April, 1984, at Covington, Louisiana.

JAMES R. JENKINS